Supreme Court, U. S.
FILED
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1511

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Petitioner

—*v.*—

EVELYN ELLIOTT, ET AL.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Petitioner

—*v.*—

FANNIE BUFFINGTON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED APRIL 21, 1978
CERTIORARI GRANTED OCTOBER 2, 1978

In the Supreme Court of the United States

OCTOBER TERM, 1978

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Petitioner

—*v.*—

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Petitioner

—*v.*—

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DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1974	
Apr 8	FILED CERT TRANSC OF RECORD ON APPEAL IN SIX VOLUMES: VOL I thru III, PLEADINGS ORIG ONLY; VOLS IV thru VI, REPORTER'S TRANSC ORG & 1 COPY; *FILED ORIG EXHIBITS IN LPS*
Apr 8	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL USA
Apr 11	Appellant's Brief Due May 21, 1974 -ra-
Apr 15	Filed applts' motion for stay pending appeal (panel 4/29/74). ty
Apr 22	FILED TWO ADD'L COPIES OF THE RECORD, VOLS. I, II, & III. no fee th
Apr 22	Filed aples' memorandum opposition to aplts' motion for stay pending appeal. (to O'Fallon) cs
May 1	Filed aplts' supplemental memorandum in support of motion for stay. (to O'Fallon) cs
May 6	Filed order (E & G) denying applts motion for stay. rh
May 20	Filed applt's motion for ext of time to file brief (C). ty
May 24	Filed order (C) granting aplt an ext of 21 days to and including June 11, 1974 to file brief. jr
June 13	Filed aplt's motion for leave to file typewritten brief to (C) with copy of typewritten brief. jr
June 18	Filed order (C) granting aplts leave to file typewritten brief. jr
June 18	Filed appellants typewritten copy of brief. gb
June 20	FILED 25 APPELLANTS BRIEFS (6/11/74) jr

DATE	FILINGS—PROCEEDINGS

1974

July 11 Filed aples' motion for an ext of time to file brief to (C). jr

July 16 Filed order (C) aples' brief due August 12, 1974. jr

July 24 Filed the Committee for the Rights of the Disabled ("CRD") motion for leave to file brief as amicus curiae on behalf of aples, to (McAvoy). jr

July 24 Filed aples' (Angel Hurtado & Helen Pritt, etc.) motion to intervene to (McAvoy). jr With brief of intervenor applicants.

July 25 Recvd intervenor's (Angel R. Hurtado) affidavit, returned for certificate of service. jr

Aug 6 Filed Intervenor's Affidavit. (McAvoy)

Aug 13 FILED 25 APPELLEES BRIEFS (Aug 9 1974) tj

Aug 16 Filed order (K & Cy) denying motion of (A. Hurtado & H. Pritt) for leave to intervene; further ordered, Committee for the Rights of the Disabled is granted leave to file a brief as amicus curiae; and the brief shall be filed within 7 days of the date this order is entered. jr

Aug 23 Filed Orig & 24 briefs of Amicus Curiae (Committee for the rights of the disabled) on behalf of aples. (Aug. 23, 1974) tj

Aug 26 Filed aplt's motion for an ext of time to file closing brief to (C). jr

Aug 28 Filed order (C) granting aplt an ext of time to and including September 9, 1974 to file closing brief. jr

Sept 11 Filed aplts' motion for leave to file reply brief in typewritten form pending reproduction to (M). jr

Sep 17 Filed Order (M) granting aplts leave to file typewritten copy of brief pending reproduction. cs

DATE	FILINGS—PROCEEDINGS

1974

Sept 18 Filed 25 copies Aplt's reply briefs. (Sept. 9, 1974) tj

Nov 8 Filed aplt's motion for leave to consolidate #74-1611 with an undocketed appeal *Buffington & Biner* vs. *Weinberger* to (C). jr

Nov 26 Filed Order (Goodwin & Sneed) granting leave to consolidate appeal with 74-3118 for purposes of consideration & oral argument; further Ordered aplts' brief in 74-3118 shall be filed on or before December 16, 1974; Aples' brief shall be filed on or before January 6, 1975 & Aplts' reply brief shall be filed on or before January 16, 1975. The Clerk shall calendar the cases for oral argument in San Francisco during the week of February 14, 1975. Aples' application for stay pending appeal in 74-3118 is hereby denied. cs

Dec 5 Filed, in 74-3118, order (Sneed) amending in the last paragraph court's order entered 11/26/74: upon due consideration, aplt's application for a stay pending appeal in 74-3118 is hereby denied. jr

Dec 6 Rec'd, in 74-3118 aple counsel's letter eliminating Robert J. LeClair as attorney of record. jr

Dec 13 Filed, in 74-3118, aplt's motion for leave to file brief in typewritten form and to supplement record references to (C) with copy of brief. jr

Dec 24 Filed, in 74-3118, order (C) granting aplt leave to file brief in typewritten form and to supplement record references. jr CALENDARD 2-10-75 S.F.

1975

Jan 7 Filed in 74-3118, ORIG & 24 APPELLEE'S BRIEF (1-6-75) (to panel) sj

Jan 8 RECEIVED IN (74-3118), ORIG & 24 APPELLANT'S BRIEF (12-12-75) sj

DATE	FILINGS—PROCEEDINGS

1975

Jan 13 Filed, in 74-3118, motion & order (Br) directing clerk to file the brief. jr

Jan 13 FILED IN 74-3118 25 APPELLANTS BRIEF (12/12/74). Panel. cl

Jan 20 Filed in 74-3118 aplt's motion for leave to file reply brief in typewritten form. To panel w/ copy of brief. cl

Jan 22 Received aple's letter requesting thirty minutes additional time for argument. To panel. cl

Jan 23 Filed, in 74-3118, order (Br) granting aplt leave to file reply brief in typewritten form. jr

Jan 23 Rec'd additional citations for apels in 74-3118 to (panel). jr

Jan 23 FILED 4 APPELLANTS REPLY BRIEFS (1/16/75). cl (TYPEWRITTEN)

Jan 29 FILED 25 APPELLANTS REPLY BRIEFS (1/16/75). To panel. cl

Feb 3 Rec'd aples' (Elliott, et al) additional citations to (panel). jr

Feb 3 Rec'd aples' (Buffington, et al) additional citations to (panel). jr

Feb 4 Pursuant to instructions from the court; Clerk's letter advising counsel request for add'l time for oral argument has been denied. gb

Feb 10 Argued & submitted to Br. T, CJJ; & S. Williams, DJ.

Feb 10 Filed in 74-3118 aple's additional authority. To panel. cl

Feb 25 Recvd government counsel's letter re add'l information requested during court session. (to Panel) cs

DATE	FILINGS—PROCEEDINGS

1975

Apr 24 Rec'd in 74-3118, aplt's letter of additional citations to (panel). jr

June 13 Recd in 74-3118, aple's letter of June 11, 1975 re recent decisions by CA, 3rd Cir. (panel) ec

Jun 30 Rec'd in 74-3118, aplt's letter of additional citations to (panel). jr

Sept 18 Rec'd aplt's letter of Sept 16 re decision by CA, 7th Cir. in Fisher, etc v. Secy of HEW, et al. (panel) ec

Sept 26 Rec'd, in 74-3118, aplts' letter of additional citations to (panel). jr

Oct 1 ORDERED OPINION (S. WILLIAMS) FILED & JUDG TO BE FILED & ENTD

Oct 1 Filed opinion—Affirmed in part, reversed in part, and the cases are remanded.

Oct 1 Filed & Entered Judgment. jr

Oct 13 Pursuant to instructions from Judge Browning, mandate not to be issued until further order of the court. jc

Oct 30 Filed appellees' motion & affidavit for ext of time to file Petition for Rehearing and for suggestion for rehearing en banc. panel

Oct 30 Rec'd an orig. & 24 Petition for Rehearing and Suggestion of the appropriateness of rehearing en banc. (panel) ec

Nov 10 Filed Order (Br) to file petition for rehearing. (all active judges)

Nov 20 Filed order (Melfi for the Court) defendants-Appellants are requested to file a response to the petition for rehearing. jr

Dec 18 Filed appellants' opposition to appellees' Petition for Rehearing and Suggestion of the Appropriateness of a Rehearing En Banc. (all active judges) ec

DATE	FILINGS—PROCEEDINGS

1976

March 4 Received Supreme Court notice that petition for certiorari was filed on February 27, 1976, assigned number 75-1234. wdt

Mar 15 Filed Appellees' motion for an order requiring the parties to submit supplemental briefs. (panel) ec

Mar 22 Rec'd from appellees letter dated March 15, 1976, re typo errors in motion for an order requiring parties to submit supp. briefs. (panel) ec

Mar 22 Filed Appellant's opposition to appellees' motion for order requiring the parties to submit supp. briefs, etc. (panel) ec

Mar 30 Filed order (S. Williams) directing the parties to submit add'l briefs on the impact, if any, of the recent Supreme Court decision in *Eldridge* v. *Weinberger*, rr U.S.L.W., 4224 (February 24, 1976). Aplts' brief shall be filed within 30 days of the date of this order & the brief for aples shall be filed within 30 days of their receipt of aplts' brief. (Aplts brief due 4/29/76) jc

Apr 22 Filed Appellants' motion for ext of time to file supplemental brief. (panel) ec

May 3 Filed order (S. Williams) granting aplts an ext of time to file supplemental brief to and including May 24, 1976. -dmf-

May 26 Filed Appellants' motion for ext of time to file supp. brief. (panel) ec

June 1 Rec'd from Stanley E. Levin, Esq., letter dated May 27, 1976 re: aplts' motion for ext of time for filing supp. brief. (panel) ec

June 29 Filed order of Judge Spencer Williams granting appellants' motion for a thirty-day extension to June 23, 1976 to file their supplemental brief. wdt

DATE	FILINGS—PROCEEDINGS

1976

June 25 Filed aplts' motion for a 7-day ext of time in which to file supp. brief. to Judge S. Williams. ec

July 1 Filed aplts' motion for a 28-day ext of time in which to file supp. brief. to Judge Williams, S. ec

Jul 2 Filed order (S. Williams) granting aplts a 7-day ext of time to file supplemental brief, to and including June 30, 1976. -dmf-

July 6 Filed, as of June 24, 1976, copy of Supreme court order granting certiorari. To panel. wdt

July 6 CASE RE-OPENED JS 34 prepared

July 6 Filed, as of June 24, 1976, certified copy of Supreme Court order remanding this case and No. 74-3118 to this court pursuant to Mathews v. Eldridge, filed in the Supreme Court on February 24, 1976. To panel. wdt

Jul 9 Filed order (Williams) granting aplts an ext of time of 28 days in which to file their supplemental brief; brief due July 28, 1976. -dmf-

Jul 30 Filed aplts' motion for a 14-day ext of time in which to file supplemental brief. (S. Williams) ec

Aug 9 Filed order (Br) granting appellants' motion for a 14-day ext of time, to and including August 11, 1976. -pb-

Aug 13 Filed Aplts' motion for leave to file their brief (Supp.) in typewritten form pending repro. panel w/brief ec

Aug 30 Rec'd 25 Aplt's supplemental briefs (8/11/76) (motion for leave to file supp. brief in typewritten form, under submission) -pb-

Sept 7 Filed aples' motion for ext of time in which to file responsive supp. brief. (panel) ec

DATE	FILINGS—PROCEEDINGS

1976

Sept 13 Filed order (S.Wms.) granting aples 30 days ext (from Sept 10) of time in which to file responsive supp. brief. (Due Oct 10, 1976) ec

Sep 15 Filed, as of Sept 13, order (S. Williams) granting aplts' leave to file supplemental brief in typewritten form. -dmf-

Oct 11 Filed aples' (Buffington & Biner) motion for ext of time in which to file responsive supplemental brief. (Br, T., S. Williams)

Oct. 18 Filed order (S. Williams) granting aples' (Buffington, Biner, etc) an ext of 30 days, to and including November 11, 1976 to file their responsive brief. jr

Nov 12 Filed appellees' motion for ext of time in which to file their responsive supplemental brief. (panel) ec

Nov 15 Filed order (S. Williams) granting aplees an ext of time of 30 days to file responsive supplemental brief. (due December 10, 1976) -dmf-

Dec 8 Filed motion & order (S Williams) Upon due consideration of the motion of aples, it is hereby ORDERED that the aples' are granted an ext of time of 7 days, to and including Dec. 17, 1976, in which to file their responsive brief. -fn-

Dec 9 Filed order (T) upon consideration of the motion of appellees for a 7-day ext of time, it is hereby ordered that the aforesaid motion is granted. -dmf-

Dec 17 Filed orig. & 25 copies Aples' (Elliott, Molina, Buffington & Biner) supplemental briefs. (12/16/76) -pb to panel

DATE	FILINGS—PROCEEDINGS

1977

Mar 17 Filed appellees' motion for oral argument on aples' petition for rehearing & the pending reconsideration of the original decision required by the order of remand. (panel) ec

Mar 28 Filed aplts' (USA, et al) response to aples' motion for oral argument. panel ec

July 1 Filed order (Br, T & S Williams) aples' motion for oral argument is denied. jr

July 1 ORDERED OPINION (WILLIAMS) FILED & JUDG TO BE FILED & ENTD

July 1 Filed opinion—The judgments of the D.C.s are affirmed in part and reversed in part, and the cases are remanded.

July 1 Filed & Entd Judgment. -fn- J-34

Jul 13 Filed aplts' motion for ext of time in which to file petition for hearing. (panel) ec

Aug 4 Filed, as of July 28, order (SPENCER WILLIAMS) On consideration of aplts for a 30 days ext of time in which to file their petition for rehearing and suggestion for rehearing en banc, it is hereby ORDERED that the motion is GRANTED. (Petition due 8-14-77.) -fn-

Aug 17 Filed aplts' motion for ext of time in which to file Petition for rehearing. (panel) ec

Aug 24 Rec'd 25 copies Aplts' petition for rehearing and suggestion for rehearing en banc. 8-23 bc (panel)

Aug 27 Filed, as of 8/25/77, order (Br) on consideration of the motion of aplts for a 10 day ext of time in which to file their petition for rehearing and suggestion for rehearing en banc, it is hereby ORDERED that the aforesaid motion is GRANTED. jr

Aug 27 Filed, as of 8/25/77, 25 Aplts' Petition for Rehearing and Suggestion for Rehearing En Banc to (All Active Judges). jr 8/23/77

DATE	FILINGS—PROCEEDINGS

1977

Dec 16 Filed, as of Dec. 15, order (BR & T, CJJ & WILLIAMS, DJ) The petition for rehearing is denied and the suggestion for in banc rehearing is rejected. -fn-

1978

Jan 3 MANDATE ISSUED

Jan 17 Returned to D.C. Vols 1 thru 3 Originals and R/T's Vols 4 thru 6 ORIGINALS and 1 ENVELOPE OF EXHIBITS m

Mar 10 Recd SC Ltr. extending time for to file pet. for cert. to & incl. 4-14-78. Th.

Apr 10 Recd SC ltr extending time for filing pet for cert to and incl. 4-21-78. Th

Apr 27 Recd SC notice of filing on 4/21/78 petition for certiorari, assigned #77-1511. Th

Apr 27 Recd 3 copies of Aplts' petition for writ of certiorari. Th

Oct 5 Filed certified copy of Supreme Court order granting certiorari on October 2, 1978. (panel) pn

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. ———

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

COMPLAINT

I

1. This is a class action seeking declaratory and injunctive relief to secure rights and privileges established by Title II of the Social Security Act, 42 U.S.C. Section 401, *et seq.*, and guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution. This action specifically seeks to declare illegal and unconstitutional the procedure used by Defendants' Social Security Administration to adjust, terminate or suspend Title II benefits to Plaintiffs and all other persons similarly situated without giving notice of the grounds upon which said adjustments or suspensions are proposed or the opportunity for Plaintiffs to be heard prior to the time a decision is made to make such adjustments or suspensions. This action further seeks an injunction ordering Defendants to refrain from adjusting or suspending Title II payments (in order to recoup alleged prior overpayments) to Plaintiffs and all others similarly situated unless they are given notice of the grounds upon which said adjustments or suspensions are proposed and the opportunity for a hearing consistent with Due Process of Law prior to the time a decision is made to make such adjustments or suspensions.

2. Jurisdiction is conferred upon this Court by 28 U.S.C. Sections 1331 and 1361. Declaratory relief is sought pursuant to 28 U.S.C. Sections 2201 and 2202.

II

3. Plaintiff EVELYN ELLIOTT is a sixty-four-year-old cancer patient who resides in Honolulu, Hawaii.

4. Plaintiff ELLIOTT became eligible for old age benefits (OASDI) in August, 1970 and received same until May, 1972.

5. Plaintiff ELLIOTT also became eligible for disability benefits from April 20, 1970, which she received from May, 1970 through April 1972, at which time said benefits were terminated without a prior hearing.

6. Plaintiff BENITO MOLINA is a resident of Makaha, Hawaii.

7. Plaintiff MOLINA was born in the Philippine Islands in 1896, and has received old age security benefits (OASDI) since 1962. He is seventy-six (76) years old.

8. Plaintiff MOLINA's benefits were terminated as of June, 1972 without notice as to the reason for such termination and without opportunity for a prior hearing.

III

9. Plaintiffs ELLIOTT and MOLINA bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to Federal Rules of Civil Procedure Rule 23(a) and (b)(2).

10. The class is composed of all social security old age disability insurance (OASDI) recipients who are being or who will be subjected to adjustment, suspension, or termination of their social security benefits pursuant to 42 U.S.C. Section 404(a) and (b) without adequate prior notice of the grounds for such action and without a prior hearing on disputed issues relating to such action.

11. The persons in the class referred to are so numerous that joinder of all members is impractical. There are questions of law and fact common to all members of the class.

12. The prosecution of separate actions by individual members of each class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible

standards of conduct for the party opposing the class.

13. The party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

14. The representative Plaintiffs will fairly and adequately protect the interests of the class.

IV

15. Defendant ELLIOT L. RICHARDSON, in his capacity as duly appointed Secretary of the United States Department of Health, Education and Welfare, is charged with the administration and supervision of the provisions of Title II of the Social Security Act (hereinafter referred to as the "Act"), 42 U.S.C. Section 401 *et seq.*, and in particular with Title II of the Act, 42 U.S.C. Sections 223 and 423, relating to disability benefits, and Sections 202 and 402, relating to old age assistance.

16. Defendant SUNG DAI SEU, in his capacity as Pacific Area Manager, Social Security Administration, is charged with the administration of the Social Security Administration rules and regulations mentioned in paragraph 15 above in the Pacific Region, including the State of Hawaii.

V

FIRST CLAIM FOR RELIEF

A. *Plaintiff ELLIOTT*

17. Plaintiff ELLIOTT, at all times mentioned herein, was eligible to receive old age benefits under the criteria set forth in the Act. She received said old age benefits in the amount of $156.00 from August, 1970 until they were suspended in June, 1972.

18. In January, 1971, Plaintiff ELLIOTT contracted multiple meyloma, a severe and virulent form of bone cancer. She was operated upon in January, 1971 and thereby became eligible for social security disability benefits. She was released from the hospital in March, 1971, and is currently receiving chemotherapy treatments. She experiences pain and has extreme difficulty walking and

standing. Plaintiff ELLIOTT applied for disability insurance payments in May, 1971 and received OASDI benefits of $197 per month until they were suspended in June, 1972.

19. In early May, 1972, one Mr. Robert Wendell, an agent of Defendants, came to MRS. ELLIOTT's house. Since Plaintiff ELLIOTT was not at home, said Windham left a copy of a letter from the Honolulu District Office of the Social Security Administration (hereinafter, "District Office") with MRS. ELLIOTT's sister-in-law and roommate, Mrs. B. Langlois. Said letter apparently informed Plaintiff ELLIOTT that her social security benefits would be totally suspended from June, 1972 to November, 1972 to recover an alleged overpayment of $1,092.70. No reasons or specifications were given as to the reason for recovery or basis for computing the overpayment. (Plaintiff has no copy of the letter; nor does the District Office. A request for a copy of the letter has been made by Plaintiff's attorney. See Affidavit and Letter of Peter A. Lee appended as Exhibits A and A-1 hereto.)

20. Since Plaintiff ELLIOTT derives her primary support from social security benefits, on or about June 27, 1972, without consulting her attorney, she wrote a letter to the District Office explaining the difficulties she was having meeting living expenses, requesting an adjustment or explanation of the overpayment, and requesting an adjustment of her monthly check of $50.00. She anticipated severe difficulties in being able to survive if her primary source of income were completely cut off. Said letter, of which she did not keep a copy, was forwarded by the District Office to the Baltimore office of the Social Security Administration on or about June 30, 1972. The District Office did not keep a copy of said letter.

21. Plaintiff ELLIOTT did not receive her checks for June, July, and August, 1972, and has been forced to apply for welfare.

22. On or about August 4, 1972, MRS. ELLIOTT, through her attorney, filed at the Honolulu District Office a Request for Reconsideration, Request for a Hearing,

Refund Questionnaire, and "Without Fault" Questionnaire. (Copies appended as Exhibts B through E hereto.) A Social Security Counsel informed her attorney that the aforementioned forms would be processed in Baltimore, a three to six week process, before a decision could be made to schedule a hearing in Honolulu. A further delay of several months could result before a decision is rendered in a local hearing. (See Affidavit of Peter A. Lee appended as Exhibit A hereto.)

23. During the week of August 7, 1972, Plaintiff ELLIOTT received a check for approximately $442.00 from the Social Security Administration, apparently in response to her letter of June 27, 1972, mentioned in paragraph 20 above. Said check ostensibly returns to her the June, July, and August payments, less $50 per month.

24. Plaintiff ELLIOTT still, however, believes that she was "without fault" in receiving any overpayment, and that Defendants have illegally deprived her of her rightful benefits.

25. Plaintiff ELLIOTT states, in the forms mentioned in paragraph 22, a) that she believed she was entitled to the social security checks she received, b) that her sole sources of income were her social security checks for old age and/or disability benefits, c) that her current sole source of income is public welfare amounting to about $200 per month. Said welfare assistance is expected to be reduced to less than $100 in subsequent months, since the first payment included retroactive benefits.

B. *Plaintiff MOLINA*

26. Plaintiff MOLINA arrived in the Islands from the Philippines in 1921 to work on the sugar and pineapple plantations. He married a Hawaii resident in 1946 and became a United States citizen in 1953. MR. MOLINA has paid for social security insurance in the course of the forty years he has worked in the Islands.

27. In 1962, Plaintiff MOLINA became eligible to receive social security old age benefits (OASDI). He re-

ceived said benefits until they were terminated in June, 1972.

28. Although Plaintiff MOLINA has lived and worked in the Islands for many years, he does not communicate or understand English well, and needs an interpreter.

29. In late May, 1972, a Social Security Administration District Office employee asked MR. MOLINA or his immediate family about a woman MR. MOLINA had allegedly married in the Philippines prior to his arrival in Hawaii. MR. MOLINA admitted that there might have been such a marriage 56 years ago, but that he had never seen nor heard of his alleged wife since he left the Philippines. Nevertheless, he agreed to start divorce or annulment proceedings, although he could not and still does not understand why the Social Security Administration is interested in the matter.

30. In June, 1972, Plaintiff MOLINA did not receive his monthly social security check. Upon inquiry at the District Office (Waipahu), he was informed that, pending clarification of his marital status and/or his obtaining a decree of divorce or annulment, his social security benefits were suspended or terminated for an indefinite period.

31. Plaintiff MOLINA had been receiving $163 per month for OASDI. He has not received a check for June, July, and August.

32. Employees at Defendants' Waipahu District Office have not attempted to communicate to Plaintiff MOLINA in Tagalog, his native language.

33. Plaintiff MOLINA depends entirely on his social security check plus $31 per month from a part-time job for his monthly income for a total monthly income of approximately $194.00. Since his OASDI benefits have been terminated, he has been forced to live on a welfare check of $75. His total monthly income is now about $106., a net reduction of $88. He cannot live decently on this sum.

VI

34. Plaintiffs' benefits were terminated by Defendants and their agents pursuant to 42 U.S.C. Section 404(a) which provides in part that under certain circumstances "proper adjustment or recover shall be made" whenever there is an overpayment of social security benefits.

35. Section 204(b) of the Social Security Act, Title II, provides that "no recoupment of overpayments" of Title II benefits shall be taken pursuant to 42 U.S.C. Section 404(a) from any person who is "without fault" if such recovery "would defeat the purpose" of Title II or "would be against equity and good conscience."

36. 20 C.F.R. Section 404.508, a regulation promulgated by the Secretary to enforce the Social Security Act provides in pertinent part as follows:

> Adjustment of recovery will defeat the purposes of Title II in (but is not limited to) situations where the person from whom recovery is sought needs substantially all of his current income (including Social Security monthly benefits) to meet current ordinary and necessary living expenses.

37. Pursuant to 42 U.S.C. Sections 404(a) and (b) and regulations promulgated pursuant thereto, Defendants and their agents have made *ex parte* determinations:

(a) That Plaintiff ELLIOTT has received an overpayment of social security benefits amounting to $1,092.70;

(b) That said alleged overpayment should be recouped by terminating Plaintiff's social security benefits for the months of May, June, July, August, September, and October;

(c) That Plaintiff ELLIOTT is either

1) "At fault" within the meaning of 42 U.S.C. Section 404(b) in receiving overpayment; or,

2) "Without fault" within the meaning of 42 U.S.C. Section 404(b).

(d) That if Plaintiff ELLIOTT was "without fault" within the meaning of 42 U.S.C. Section 404(b), the

suspension of her social security benefits by Defendants would not defeat the purpose of Title II of the Act or be against equity and good conscience.

(e) That Plaintiff MOLINA is ineligible for further OASDI benefits pending his annulment or divorce.

(f) That Plaintiff MOLINA's benefits have been terminated as of June, 1972 for an indefinite period of time.

(g) That Plaintiff MOLINA is either "at fault" or "without fault" for receipt of unauthorized benefits within the meaning of 42 U.S.C. Section 404(b).

(h) That if Plaintiff MOLINA is "without fault", suspension of his benefits will not defeat the purposes of Title II of the Act or be against equity and good conscience.

38. Defendants have never given either Plaintiff ELLIOTT or Plaintiff MOLINA notice of the grounds for the immediately aforementioned determinations. Nor have they granted either Plaintiff the opportunity to be heard and to contest the above determinations before depriving them of social security (OASDI) benefits.

39. Defendants' summary, *ex parte* action "adjusting" Plaintiffs' benefits without notice or prior hearing on the issues of overpayment, fault, hardship, equity and good conscience violates the clear mandate of 42 U.S.C. Section 404(a) and (b).

40. By reason of their precipitous and ill-considered actions, Defendants have caused Plaintiffs and all other persons similarly situated extreme hardship, irreparable injury, suffering, and anxiety. Because Plaintiff ELLIOTT in particular suffers from a severe and debiliating form of cancer, Defendants have appreciably increased the chances of her demise by depriving her or threatening to deprive her of the necessities of life such as adequate food, clothing, medical care, and shelter. Plaintiffs and all other persons similarly situated have suffered and will continue to suffer severe and irreparable injury to their health and well-being as a result of such summary, *ex parte* "adjustments" of their Title II OASDI payments by Defendants until the statute and procedures described above are declared illegal or unconstitutional and their enforcement and execution in said illegal manner is enjoined by the Court.

41. Plaintiffs have no plain, adequate, or speedy remedy at law and this suit for mandatory and declaratory relief is their only means of securing such relief.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

VII

SECOND CLAIM FOR RELIEF

42. Plaintiffs allege and re-allege paragraphs 1 through 41 as if fully set forth herein.

43. Defendants' peremptory, *ex parte* action "adjusting" and suspending Plaintiffs' social security benefits without notice or prior hearing violates the Due Process Clause of the Fifth Amendment to the United States Constitution in that:

(a) Such actions effectively terminate and withhold benefits essential to maintain life itself without affording Plaintiffs and all other persons similarly situated reasonable and adequate notice and opportunity for a prior hearing, and;

(b) Such actions fail to afford Plaintiffs and all others similarly situated with notice of the substance of the evidence upon which the determination to "adjust", suspend, or terminate payments was made.

44. 42 U.S.C. Section 404(a), insofar as it permits Defendants to act as alleged in paragraphs 36 and 37 of this Complaint, deprives Plaintiffs and all other persons similarly situated of rights secured to them under the Fifth Amendment to the United States Constitution, and is, to that extent, unconstitutional.

WHEREFORE, Plaintiffs respectfully pray that this honorable Court:

1) Assume jurisdiction of this case;

2) Declare that this action be maintained as a class action pursuant to Federal Rules of Civil Procedure, Rule 23;

3) Enter a temporary restraining order and a preliminary mandatory injunction ordering Defendants to:

(a) Pay to Plaintiff ELLIOTT her regular monthly disability benefits for the months of June, July, and August without adjustment in the amount of $624.40, less $442.00 received, for a total of $150.00;

(b) Continue to pay Plaintiff ELLIOTT's disability benefits without adjustment at the rate of $197.47 per month;

(c) Resume payment of Plaintiff MOLINA's OASDI benefits immediately, pending the final outcome of this action;

(d) Pay to all members of Plaintiffs' class whose social security benefits are currently being adjusted pursuant to 42 U.S.C. Section 404(a) and (b) their regular monthly social security benefits, including all back benefits being withheld unlawfully;

(e) Provide Plaintiffs ELLIOTT and MOLINA and all other persons similarly situated with written notice and an opportunity for a hearing on the issues of overpayment, fault, hardship, and equity and good conscience prior to adjusting, reducing or terminating such person's benefits.

4) Enter a declaratory judgment pursuant to 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that Defendants' practice of making determinations under 42 U.S.C. Section 404 (a) and (b) without notice or prior hearing, violates the clear mandate of Title II of the Social Security Act, Sections 204(a) and (b).

5) Enter a declaratory judgment pursuant to 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that the Defendants' practice of making determinations under 42 U.S.C. Sections 404(a) and (b) without notice or prior hearing violates the due process clause of the Fifth Amendment to the United States Constitution.

6) Issue a permanent mandatory injunction ordering Defendants, their successors in office, agents and employees to provide Plaintiffs ELLIOTT and MOLINA

and all other persons similarly situated with written notice and an opportunity for a hearing on the issue of overpayment, fault, hardship, and equity and good conscience prior to adjusting social security old age, and disability insurance benefits, pursuant to 42 U.S.C. Sections 404(a) and (b).

7. Award the Plaintiffs and all other persons similarly situated such further and alternative relief as the Court may deem just and equitable.

DATED: Honolulu, Hawaii, August 17, 1972.

/s/ Evelyn Elliott
EVEYLN ELLIOTT
Plaintiff

By /s/ Stanley E. Levin
BENITO MOLINA
Plaintiff

By Stanley E. Levin
His Attorney

/s/ Peter A. Lee
PETER A. LEE
Their Attorney

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

STANLEY E. LEVIN, being first duly sworn on oath, deposes and says that he is the Attorney for the Plaintiff BENITO MOLINA above named; that he has read the foregoing Verified Complaint and knows the contents thereof; and that the matters and statements therein set forth are true to the best of his knowledge and belief.

/s/ Stanley E. Levin
STANLEY E. LEVIN
Attorney for Plaintiff
BENITO MOLINA

Subscribed and sworn to before me this 17th day of August, 1972.

/s/ Tomiko Sakai
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 11-14-75

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

EVELYN ELLIOTT, being first duly sworn on oath, deposes and says that she is the Plaintiff above named; that she has read the foregoing Verified Complaint and knows the contents thereof; and that the matters and statements therein set forth are true to the best of her knowledge and belief.

/s/ Evelyn Elliott
EVELYN ELLIOTT

Subscribed and sworn to before me this 17th day of August, 1972.

/s/ Tomiko Sakai
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 11-14-75

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. ———

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF PETER A. LEE

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

I, PETER A. LEE, being first duly sworn on oath, depose and say that:

1. I am an attorney licensed to practice in the State of Hawaii and am the attorney for Plaintiff Elliott in the above-entitled case;

2. On or about August 4, 1972 I went to the Honolulu District Office of the Social Security Administration (hereinafter "Administration") to seek clarification of the reasons for suspension of Mrs. Elliott's benefits;

3. A social security counselor, Mr. Mishima, showed me Mrs. Elliott's file;

4. Said file contained no copy of the letter sent by the Administration informing her of any overpayment;

5. However, said file did note that a social security agent had been sent to Mrs. Elliott's house to deliver a copy of a letter from the Administration notifying Mrs. Elliott that the Administration would try to recoup an overpayment of $1,092.00;

6. Said Mr. Mishima told me that Mrs. Elliott's checks from June through October would be terminated until the overpayment was fully recouped;

7. Said Mr. Mishima also told me that, should Mrs. Elliott request a hearing, the following delays would probably be inevitable:

(a) Two month delay while the Administration's Baltimore office decided whether to grant a Request for Reconsideration;

(b) A two to three week delay to send Mrs. Elliott's file to the Honolulu District Office;

(c) A three to six week delay before a hearing could be convened in Honolulu.

8. Said time periods could thus result in up to a four-month delay before Mrs. Elliott could even receive a hearing on the basis for the alleged overpayment. A further delay could result if the hearing officer took the case under submission;

9. Said Mr. Mishima could only conjecture as to the reason recoupment was sought;

10. I was further informed that the Honolulu office was merely a conduit for Social Security Administration disability decisions, and that no one in the District Office would be able to furnish me or Mrs. Elliott with the exact reason for suspension and recoupment.

11. Since neither I nor Mrs. Elliott has been able so far to procure a copy of the letter informing her of recoupment, I wrote to the Baltimore office of the Social Security Administration on or about August 8, 1972, requesting a copy of said letter of suspension. Copy of said letter is appended.

FURTHER affiant sayeth not.

/s/ Peter A. Lee
PETER A. LEE

Subscribed and sworn to before me this 16th day of August, 1972.

/s/ [Illegible]
Notary Public
Fifth Judicial Circuit
State of Hawaii

My commission expires: Oct. 29, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Oct. 19, 1972]

EVELYN ELLIOTT and BENITO MOLINA, Individually and on behalf of all others similarly situated, PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, Individually and in his capacity as Secretary, United States Department of Health, Education and Welfare; ET AL., DEFENDANTS

ANSWER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within was duly hand delivered to Stanley Levin & Peter A. Lee, attorney at his last known address on October 19, 1972.

ROBERT K. FUKUDA
United States Attorney
District of Hawaii

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT and BENITO MOLINA, Individually and on behalf of all others similarly situated, PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, Individually and in his capacity as Secretary, United States Department of Health, Education and Welfare; ET AL., DEFENDANTS

ANSWER

Come now ELLIOT L. RICHARDSON, individually and in his capacity as Secretary, United States Department of Health, Education and Welfare, and SUNG DAI SEU, individually and in his capacity as Pacific Area Manager, Social Security Administration, Department of Health, Education and Welfare, defendants herein, and in answer to the Verified Complaint of the plaintiffs filed herein on August 17, 1972 admit, deny and allege as follows:

1. Defendants admit the allegations set forth in paragraphs 15 and 16 of the Complaint.
2. Defendants deny the allegations set forth in paragraphs 11, 12, 13, 14, 39, 40, 41, 43 and 44 of the Complaint.
3. Defendants have insufficient knowledge or information upon which to base a belief as to the truth of the matters stated in all other paragraphs of the Complaint and therefore deny the same and put the plaintiffs on their proof thereof.

WHEREFORE, defendants pray that plaintiffs' request for the Court to assume jurisdiction of this case, and to declare a class action pursuant to the Federal Rules of Civil Procedure, Rule 23, the entry of a temporary restraining order and preliminary mandatory in-

junct'on, a declaratory judgment, and a permanent mandatory injunction be denied, and that the plaintiffs' complaint be dismissed.

DATED: October 19, 1972, at Honolulu, Hawaii.

/s/ Robert K. Fukuda
ROBERT K. FUKUDA
United States Attorney
District of Hawaii
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT and BENITO MOLINA, Individually and on behalf of all others similarly situated, PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, Individually and in his capacity as Secretary, United States Department of Health, Education and Welfare; ET AL., DEFENDANTS

AMENDED ANSWER

EDWIN YOURMAN
Assistant General Counsel

PAUL MERLIN
Chief of Litigation

SARAH L. KEMBLE
Attorney

ROBERT K. FUKUDA
United States Attorney
District of Hawaii
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT and BENITO MOLINA, Individually and on behalf of all others similarly situated, PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, Individually and in his capacity as Secretary, United States Department of Health, Education and Welfare; ET AL., DEFENDANTS

AMENDED ANSWER

Come now ELLIOT L. RICHARDSON, individually and in his capacity as Secretary, United States Department of Health, Education and Welfare, and SUNG DAI SEU, individually and in his capacity as Pacific Area Manager, Social Security Administration, Department of Health, Education and Welfare, defendants herein, and file this Amended Answer to the Verified Complaint of the plaintiffs filed herein on August 17, 1972.

1. Defendants have insufficient knowledge or information upon which to base a belief as to the truth of the matters set forth in paragraph 1 of the Complaint, and therefore deny the same and put the plaintiffs on their proof thereof.

2. Defendants deny the jurisdictional allegations of paragraph 2. Defendants affirmatively state that jurisdiction to review a decision of the Secretary arising under Title II of the Social Security Act is defined by and limited to 42 U.S.C. 405(g); and that because the plaintiffs have not exhausted their administrative remedies there is no "final decision" of the Secretary before this Court as required by that section.

3. Defendants deny the factual allegations of paragraphs 3 to 8 for lack of knowledge or information sufficient on which to form a belief.

4. Defendants deny the class action allegations of paragraphs 9 to 14.

5. Defendants admit the allegations of paragraphs 15 and 16.

6. Defendants deny factual allegations of paragraphs 17 to 34 for lack of knowledge or information sufficient on which to form a belief.

7. Defendants deny the allegations of paragraph 35 to the extent that they sate that the Social Security Act precludes the Secretary from recouping overpayments until the Secretary has determined whether or not recovery of the overpayment can be waived.

8. Defendants admit the allegations of paragraph 36.

9. Defendants deny the allegations of paragraphs 37 and 38 for lack of knowledge or information sufficient on which to form a belief.

10. Defendants deny the allegations of paragraph 39.

11. Answering the allegations of paragraph 40, defendants assert that they are conclusions and not statements of fact which require an answer; but if an answer is required defendants deny these allegations.

12. Defendants deny the allegations of paragraphs 41 and 43. Answering the allegations of paragraph 42, defendants reiterate the responses to paragraphs 1 to 41 as set forth herein.

WHEREFORE, defendants pray that plaintiffs' request for the Court to assume jurisdiction of this case, and to declare a class action pursuant to the Federal Rules of Civil Procedure, Rule 23, the entry of a temporary restraining order and preliminary mandatory injunction, a declaratory judgment, and a permanent mandatory injunction be denied, and that the plaintiffs' Com-

plaint be dismissed for lack of jurisdiction and failure to state a claim on which relief can be granted.

DATED: October 25, 1972, at Honolulu, Hawaii.

EDWIN YOURMAN
Assistant General Counsel

DEPARTMENT OF HEALTH,
EDUCATION & WELFARE

PAUL MERLIN
Chief of Litigation

SARAH L. KEMBLE
Attorney

ROBERT K. FUKUDA
United States Attorney
District of Hawaii

By /s/ Robert K. Fukuda
ROBERT K. FUKUDA
United States Attorney

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. ———

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

MOTION FOR DETERMINATION OF CLASS ACTION PURSUANT TO RULES OF CIVIL PROCEDURE RULE 23

Plaintiffs, through their undersigned counsel, move that, pursuant to Federal Rules of Civil Procedure Rule 23(a) and (b)(2), this Court enter an Order determining that this suit shall be maintained as a class action on behalf of themselves and all persons similarly situated who are, have been, or will be affected by the operation of 42 U.S.C. Section 401 *et seq.* and regulations promulgated pursuant thereto, on the grounds that it appears from their Complaint and Memorandum of Points and Authorities on file herein that the requirements of Federal Rules of Civil Procedure Rule 23(a), (b)(1), and (2) are met.

Plaintiffs further move that this Court define the class as all those persons in the State of Hawaii who receive old age and disability insurance (OASDI) payments under Title II of the Social Security Act, 42 U.S.C. Section 401 *et seq.*, and who are subject to a summary *ex parte* adjustment of said payments without notice or an opportunity for a due process hearing prior to such action affecting their payments.

Plaintiffs further move that this Court order the Defendants, their agents and employer, and all persons in active concert or participation with them, to furnish Plaintiffs the names of all persons whose disability and old age social security benefits are now being adjusted,

suspended, or terminated by *ex parte* administrative action; and further, that Defendants notify said social security beneficiaries that they are being represented as a class in the above entitled action, and that, pursuant to the granting of a temporary restraining order, payment of their disability and old age benefits will be immediately resumed. (A copy of such proposed notice is appended as Exhibit 1 hereto.)

EVELYN ELLIOTT and
BENITO MOLINA

By /s/ Peter A. Lee
PETER A. LEE
Their Attorney

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

ORDER DETERMINING CLASS

The Court, having examined Plaintiffs' Verified Complaint, Motion for Determination of Class Action Pursuant to Federal Rules of Civil Procedure Rule 23(b)(2), and Points and Authorities in support thereof, and it appearing that the requirements of Rule 23 and Rule 23(b)(2) are met, it is hereby

ORDERED that this action be maintained as a class action;

IT IS FURTHER ORDERED that Plaintiffs EVELYN ELLIOTT and BENITO MOLINA be representatives of the class of all social security old age and disability benefit recipients resident in the State of Hawaii, who are being or will be subjected to adjustment of their social security benefits pursuant to 42 U.S.C. § 404(a) and (b) without adequate prior notice of the grounds for such action and without a prior hearing on disputed issues relating to such actions.

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court; and

IT IS FURTHER ORDERED that copies of this Order be immediately served upon Defendants named herein.

DATED: Honolulu, Hawaii, October 17, 1972.

/s/ Samuel P. King
Judge
United States District Court of
Hawaii

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT and BENITO MOLINA, Individually and on behalf of all others similarly situated, PLAINTIFF

vs.

CASPAR WEINBERGER, Individually and in his capacity as Secretary, United States Department of Health, Education, and Welfare; and SUNG DAI SEU, Individually and in his capacity as Pacific Area Manager, Social Security Administration, Department of Health, Education and Welfare, DEFENDANTS

PRE-TRIAL ORDER

The Court, having considered the arguments and representations of counsel at the hearing on defendants' Motion To Set Aside the Court's Preliminary Injunction of April 3, 1973 or, In the Alternative, For a Stay of the Preliminary Injunction of May 7, 1973 and at the pre-trial conference held on May 10, 1973, and being fully advised in the premises,

IT IS HEREBY ORDERED that Caspar Weinberger be, and hereby is, substituted for the defendant, Elliot L. Richardson pursuant to the provisions of Rule 25 of the Federal Rules of Civil Procedure; and

IT IS FURTHER ORDERED that the Court's preliminary injunction of April 3, 1973, by, and hereby is, stayed pending a final determination on the merits of this action; and

IT IS FURTHER ORDERED that this action be maintained as a class action and that the class consists of two sub-classes. The first sub-class will consist of all Social Security old age recipients, resident in the State of Hawaii who are being or will be subjected to recoupment

of their overpayments of Social Security benefits, pursuant to 42 U.S.C. § 404(a) and (b), which overpayment is based upon an annual earnings report submitted by the beneficiary reporting earnings in excess of levels contained in 42 U.S.C. § 403(b) and (f) requiring deductions of monthly benefits for the requisite month of work activity. Plaintiffs Silva and Vaquilar and Ortiz are proper representatives of the above-described class. The second sub-class will consist of all Social Security old age and disability recipients, resident in the State of Hawaii, who are being or will be subjected to recoupment of overpayments of their social security benefits pursuant to 42 U.S.C. § 404(a) and (b) for any reason whatsoever, other than for overpayments based upon annual earnings report as described in the above-mentioned first sub-class. Plaintiffs Elliott, Gaines and Yamasaki are proper representatives of the above-mentioned second sub-class;

IT IS FURTHER ORDERED that all other plaintiffs and/or intervenors be, and hereby are, dismissed from this action, without prejudice as to their further rights under Title II of the Social Security Act; and

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court.

DATED: May 11, 1973, at Honolulu, Hawaii.

/s/ Samuel P. King
United States District Judge
for the District of Hawaii

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANT

PRELIMINARY INJUNCTION

This matter having come on to be heard before this Court on February 23, 1973, on Defendants' Motion for Extension of Time and Plaintiffs' Motion for Temporary Restraining Order and Memorandum in Support thereof, and, the Court having previously entered an Order Determining Class pursuant to Rule 23 of the Federal Rules of Civil Procedure; and, it appearing to the Court that:

(a) Defendant Richardson, individually and in his capacity as duly appointed Secretary, Department of Health, Education and Welfare, and Defendant Seu, individually and in his capacity as Pacific Area Manager, Social Security Administration, have adjusted, suspended, or terminated the old age and disability social security benefits of Plaintiffs and the class which they represent without affording said persons notice of reasons for such summary action, nor opportunity for a prior hearing;

(b) Immediate and irreparable injury, loss, and damage have resulted and will result to Plaintiffs and their class before this matter can be decided on its merits;

(c) Defendants will not suffer undue injury as a result of this Order;

(d) Plaintiffs have raised serious and substantial statutory and constitutional questions on the validity of the procedure used by Defendants to adjust payments of OASDI benefits under Title II of the Social Security Act;

IT IS HEREBY ORDERED that Defendant Richardson, his successor, his agents and employees at the Social

Security Administration's Payment Centers, and all persons in active concert or participation with them are restrained and enjoined from adjusting, terminating, or suspending social security old age and disability benefits accruing to Plaintiffs and their class without notice and an opportunity for a hearing before any adjustment is effectuated;

IT IS FURTHER ORDERED that Defendant Richardson, his successor, his agents and employees at the Social Security Administration's Payment Centers, and all persons in active concert or participation with them restore any and all money withheld since June 22, 1972, without notice and a prior hearing, from Plaintiffs UMEYUKI TANIGUCHI, CARL YAMASAKI, NANCY YAMASAKI, HIROKO SHIMABUKURO, LORRAINE ROBINSON, ISABELLE ORTIZ, JOHN V. VAQUILAR, RAYMOND GAINES, and JORDAN A. SILVA pending the holding of a pre-adjustment hearing in each of their individual cases;

IT IS FURTHER ORDERED that Defendant Richardson, his successor, his agents and employees at the Social Security Administration's Payment Centers, and all persons in active concert or participation with them continue to pay said Plaintiffs and the members of their class their full benefits, at their pre-adjustment levels until the members of said class have been afforded an opportunity for a prior hearing, and until there is made a final determination of the issues in the above-entitled case;

IT IS FURTHER ORDERED that Defendant Richardson, his successor, his agents and employees at the Social Security Administration's Payment Centers, and all persons in active concert or participation with them shall effectuate this Order by withholding the mailing of any letter or notice of downward adjustment of benefits, and otherwise processing downward adjustments, to any recipient of Title II Social Security benefits: (1) who is a member of the class herein; and (2) whose address con-

tains a State of Hawaii zip code designation (96700 et seq. and 96800 et seq.);

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until modified by further order of this court, and;

IT IS FURTHER ORDERED that copies of this Order be immediately served upon: (1) the Defendants, Richardson or his successor, and Seu, individually and in their duly appointed capacities as, respectively, Secretary, United States Department of Health, Education and Welfare, and Pacific Area Manager, Social Security Administration; and (2) the supervising officials of all Social Security Administration Payment Centers.

THIS ORDER SHALL TAKE EFFECT on and after April 16, 1973.

DATED: Honolulu, Hawaii, April 3, 1973.

/s/ Samuel P. King
Judge
United States District Court
District of Hawaii

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil Action No. 72-3629

EVELYN ELLIOTT and BENITO MOLINA, ET AL.,
PLAINTIFFS

v.

CASPAR W. WEINBERGER, Individually and in his capacity as Secretary, United States Department of Health, Education and Welfare, ET AL., DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given that defendants hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order granting judgment in favor of plaintiffs entered in this action on the 19th day of February, 1974.

/s/ Harold M. Fong
HAROLD M. FONG
United States Attorney

SUPREME COURT OF THE UNITED STATES

No. 77-1511

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION AND WELFARE, PETITIONER

v.

EVELYN ELLIOTT, ET AL.

ORDER ALLOWING CERTIORARI

Filed October 2, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Jan. 9, 1973]

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF CARL YAMASAKI

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

CARL YAMASAKI, being first duly sworn on oath, deposes and says:

1. That he resides at Kukui Housing, Honolulu, Hawaii, with his wife and child.
2. That he is thirty-one years old.
3. That he has been receiving social security disability insurance (OASDI) since approximately June 1969 as a consequence of a disability incurred in 1964.
4. That he currently receives approximately $99.00 per month in OASDI benefits.
5. That on or about October 2, 1972, he received a letter from the Social Security Administration informing him that beginning January 1973 the Administration would begin to recoup a $207.90 overpayment assessed as the result of a "processing error."
6. That he contacted the District Office, pursuant to said letter, and submitted evidence showing that he is no longer receiving Workmen's Compensation.

7. That the officials at the District Office have not informed him of either the right or necessity of filling out a Without Fault Questionnaire or Request for Reconsideration.
8. That he does not know why the Administration is recouping his benefits or what the substance of the alleged "processing error" is.

Further affiant sayeth naught.

/s/ Carl Yamasaki
CARL YAMASAKI

Subscribed and sworn to before me
this 22nd day of December, 1972.

/s/ Tomiko Sahai
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 11-14-75

EXHIBIT L

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Jan. 9, 1973]

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF NANCY YAMASAKI

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

NANCY YAMASAKI, being first duly sworn on oath, deposes and says:

1. That she resides at Kukui Gardens, 1351 Aala Street, #201, Honolulu, Hawaii, with her husband, child, and mother.
2. That she is married to Carl K. Yamasaki, whose affidavit is also being submitted herewith.
3. That her husband, Carl K. Yamasaki, is receiving Social Security Disability benefits, of which she also receives a statutory share.
4. That on or about October 2, 1972, she received a letter from the Administration informing her that due to a "processing error," an overpayment of $207.90 had occurred. (Copy of letter attached as Exhibit A)
5. That her monthly benefits of $10.60 would be withheld from January 1973 through October 1973.
6. That in compliance with the instructions on said letter, she went to the District Office in Honolulu within thirty days of October 2, 1972.

7. That she attempted to get clarification from District Office officials about the reasons for the recoupment, and about what evidence she had to submit to prevent a recoupment.
8. That the District Office worker told her only that the District Office would write to Baltimore to request clarification on to request adjustment of the recoupment.
9. That at no time was she instructed by the District Office as to what evidence or information she should bring forward to stop the recoupment.
10. That the letter from the Administration states in the last sentence that "Unless we hear from you within 30 days, we shall withhold benefits as indicated above."
11. That she assumes that the District Office wrote to Baltimore as she was promised (in paragraph 8 supra).
12. That as of this date, she has not heard anything further from the Administration and does not know whether her benefits will be recouped, but assumes that they will be, beginning January 1973.
13. That recoupment will work a severe burden on herself, her husband, and her family.

Further affiant sayeth naught.

/s/ Nancy Yamasaki
NANCY YAMASAKI

Subscribed and sworn to before me this 28th day of December, 1972.

/s/ Tomiki Sakai
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 11-14-75

EXHIBIT "A"

[SEAL]

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
Baltimore, Maryland 21241

October 2, 1972

BUREAU OF
DISABILITY INSURANCE

REFER TO:

DI:BP:E
576-38-2979 HB2

Mrs. Nancy Yamashki:
Apt 201
1351 Aala St
Honolulu HI 96817

Dear Mrs. Yamashki:

Our records show you received **$207.90** more in social security benefits than you should have. Due to a processing error, you were paid **$40.30 for February through** August 1972, instead of $10.60 for that period of time. As a result, you were overpaid the above amount.

If you believe that this determination is not correct, you may request that your case be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make any such request through any social security office. If additional evidence is available, you should submit it with your request.

To recover the overpayment, we shall withhold your benefits beginning with the check you would normally receive in January 1973. The next check that you will receive after the full overpayment has been withheld will be for $19.80. It will be sent to you about November 3, 1973. Thereafter, your regular monthly benefits of $20.70 will be resumed.

Under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:

1. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*
2. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason.

To decide whether repayment would cause you financial hardship, we shall need a statement of your assets, and monthly income and expenses.

If you think you meet *both* conditions or if withholding the entire amount of your monthly benefit will cause you financial hardship, call, write, or visit any social security office within 30 days from the receipt of this letter. Please take this letter with you if you visit the office. Unless we hear from you within 30 days, we shall withhold benefits as indicated above.

Sincerely yours,

/s/ C. C. Hall
C. C. HALL
Assistant Director

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Jan. 9, 1973]

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF JOHN V. VAQUILAR

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

JOHN V. VAQUILAR, being first duly sworn on oath, deposes and says:

1. That he resides at 1421 Alapai Street, Apartment G, Honolulu, Hawaii.
2. That he was born on June 24, 1903 and is 69 years old.
3. That he first became eligible for social security old age benefits in 1966.
4. That until July 1972 he had been receiving approximately $161.00.
5. That in April 1972 he was informed by a letter from the Social Security Administration that he was liable to the Administration for an overpayment of approximately $909.90 due to an Administrative error.
6. That if in fact said overpayment occurred, he was without fault as to any error.
7. That he in fact believed said $909.90 to be due to him for back benefits.
8. That said letter informed him of his right to come forward within 30 days to contest the said overpayment, or to make an adjusted repayment.

9. That he went to the Honolulu District Office and arranged to repay the said $909.90 at $80 per month.
10. That he did not fill out the "Without Fault" Questionnaire and he was not informed that a finding of lack of fault might enable him to escape recoupment altogether.
11. That he feared that if he did not agree to pay back the money on an adjusted basis, his benefits would be completely suspended.
12. That he depends upon his OASDI benefits for the support and livelihood of his wife and eleven year old child.

Further affiant sayeth naught.

/s/ John V. Vaquilar
JOHN V. VAQUILAR

Subscribed and sworn to before me this 19th day of December, 1972.

/s/ Tomiki Sakai
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 11-14-75

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Jan. 9, 1973]

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF RAYMOND GAINES

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

RAYMOND GAINES, being first duly sworn on oath, deposes and says:

1. That he resides at 143-A Prospect Street, Honolulu, Hawaii.
2. That he is sixty-two years old and is and has been eligible for social security old age benefits of $125.00 since December 1971.
3. That in October 1972, his check for $125.00 did not arrive, nor has any money from social security been forthcoming since October 1972.
4. That on or about November 16, 1972, he contacted the Honolulu District Office, which called Baltimore, Maryland, to clarify the reasons for terminating his benefits.
5. That said District Office told him that he might be receiving a check in December.
6. That prior to termination of his check he has never received no notification by letter or personal visitation informing him of the reasons for termination, if any,

nor has he been given an opportunity for a hearing as to any issue concerning termination of his benefits.

Further affiant sayeth naught.

/s/ Raymond Gaines
RAYMOND GAINES

Subscribed and sworn to before me this 26th day of Dec., 1972.

/s/ Gladys L. Kim
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 11-26-75

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Jan. 11, 1973]

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF ISABELLE ORTIZ

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

ISABELLE ORTIZ, being first duly sworn on oath, deposes and says:

1. That she resides at 84-937 Hana Street, Waianae, Hawaii.
2. That she is sixty-six years old and has been and is eligible to receive social security old age benefits (OASDI).
3. That she first became eligible to receive OASDI in May 1971 when she became sixty-five years old.
4. That in May 1971 she retired from her job at Pearl Harbor Naval Base and began receiving OASDI benefits of $70.40 beginning in June 1971.
5. That in approximately February 1972, she received a letter from the Social Security Administration stating that an overpayment had been made, and that she owed the Administration $492.80 for an overpayment.
6. That she contacted the Waipahu Branch Office, but could not get any information about the reasons for said recoupment.
7. That she depends upon her OASDI benefits for survival.

8. That neither the Branch Office nor the said letter informed her of her rights to come forward with evidence, her right to waiver of fault, or her right to have a reconsideration.
9. That, as a consequence of the said recoupment, her benefits were cut off completely from March through October, 1972.

Further affiant sayeth naught.

/s/ Isabelle Ortiz
ISABELLE ORTIZ

Subscribed and sworn to before me this 28th day of December, 1972.

/s/ [Illegible]
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 12-2-74

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Feb. 15, 1973]

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF JORDAN A. SILVA

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

JORDAN A. SILVA, being first duly sworn on oath, deposes and says:

1. That he resides at 3366 Keanu Street, Honolulu, Hawaii.
2. That he was born on February 22, 1902, and is seventy years old.
3. That he first became eligible to receive social security old age benefits in 1964.
4. That until June 1972 he was receiving approximately $99 per month.
5. That in June 1972 his social security old age benefits were cut off without notice or opportunity for a hearing.
6. That he called the District Office and was informed that social security administration was probably trying to recoup an overpayment, that said overpayment may have occurred because he allegedly earned more than $1680 in 1971, and that his checks would be continued after about two months.

7. That his social security checks have never been resumed, and he has been deprived of benefits continuously since June 1972.
8. That there is an issue of fact as to how much income he actually earned in 1971-1972.
9. That said letter of recoupment stated that his benefits would be suspended until the alleged overpayment is recovered by the Administration.
10. That his benefits will be suspended for approximately sixteen months.
11. That although he has a part-time job as a janitor at the Bank of Hawaii, he does not know whether he will be able to work much longer.
12. That he depends upon his social security old age benefits to help support himself and his wife.

Further affiant sayeth naught.

/s/ Jordan A. Silva
JORDAN A. SILVA

Subscribed and sworn to before me this 14th day of February, 1972.

/s/ Tomiki Sakai
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 11-14-75

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3639

EVELYN ELLIOTT, BENITO MOLINA, Individually and on behalf of all others similarly situated, PLAINTIFFS

v.

ELLIOT L. RICHARDSON, Secretary Department of Health, Education, and Welfare, DEFENDANT

AFFIDAVID OF BERNARD POPICK

BALTIMORE COUNTY)
) SS
STATE OF MARYLAND)

I, Bernard Popick, being duly sworn, depose and say as follows:

1) I am the Director of the Bureau of Disability Insurance of the Social Security Administration, Department of Health, Education, and Welfare.

2) The Bureau of Disability Insurance is located in Baltimore, Maryland. It provides direction for the nationwide administration of the disability insurance program. It is charged with the responsibility of reviewing initial disability determinations made by State Agencies, making reconsideration determinations on disability claims which have been initially disallowed, maintaining disability claims and benefit accounts and related processing controls, and certifying disability benefit payments. The Bureau of Disability Insurance also makes overpayment determinations in disability cases and in such cases determines whether recovery of an overpayment should be waived pursuant to 42 U.S.C. 404(b).

3) In connection with my official duties I have custody of the claims folder of the plaintiff, Evelyn Elliott, (hereinafter referred to as the plaintiff), pertaining to her claim for disability insurance benefits, based on her

social security earnings record. The plaintiff's disability claims folder also contains pertinent data on the plaintiff's claim for retirement insurance benefits. My examination of this folder reveals the following.

4) On May 25, 1970 the plaintiff filed an application for reduced retirement insurance benefits payable beginning at age 62 pursuant to 42 U.S.C. 402(a). On or about June 15, 1970 the Administration awarded the plaintiff retirement insurance benefits at the rate of $141.40 a month, effective beginning in August 1970, the month the plaintiff attained age 62. The monthly benefit rate was later increased to $156.10, effective in January 1971, due to legislation raising the monthly benefit amount.

5) Subsequently, on April 20, 1971, the plaintiff filed an application for disability benefits payable under 42 U.S.C. section 423. The Administration awarded disability insurance benefits to the plaintiff on July 13, 1971. This award was effective beginning with the month of May 1970, based on a finding that disability had commenced on October 30, 1969.[1] The plaintiff's disability benefit rate was $179.40 a month from May, 1970 through December 1970. It was increased to $197.40 a month effective in January 1971, due to legislation increasing the monthly benefit amount.

6) Section 202(k)(4) of the Social Security Act, 42 U.S.C. 402(k)(4), provides that any individual who is entitled for any month to both a retirement insurance benefit and a disability benefit shall be entitled only to the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such benefits for such month. Under this section the plaintiff Evelyn Elliott, having been simultaneously entitled to both retirement insurance benefits and disability benefits for months beginning with August 1970, was entitled to receive only the larger of

[1] 42 U.S.C. 423(a)(1) provides that entitlement to disability insurance benefits begins six full months after the onset of disability.

the two benefits, i.e., the disability benefit, for all months in which the simultaneous entitlement continued.

7) The Administration advised the plaintiff of the award of disability benefits in a letter to her dated August 13, 1971. This letter informed the plaintiff of the amount of the monthly disability benefit, and further advised her:

> "This disability benefit replaces the monthly retirement benefit you were previously receiving. Your next monthly check will include all disability benefits due you less the payments you have already received. Thereafter, you will receive your regular monthly payments."

8) On August 12, 1971 the Administration sent the plaintiff a check for $1,214.70. This check, which was the "next monthly check" referred to in the letter quoted in the previous paragraph, represented back disability benefits due for the months of May 1970 through August 1971 ($3,014.40) minus the total amount of the retirement insurance benefits which the plaintiff had received for the months of August 1970 through July 1971 $1,799.70). This was consistent with 42 U.S.C. 402(k)(4), permitting payment of only the disability benefit for months during which the plaintiff was entitled to both retirement insurance benefits and disability insurance benefits.

9) A record in the claims folder dated August 3, 1971 indicates that as of that date the Administration was aware of the plaintiff's simultaneous entitlement to both retirement insurance benefits and disability insurance benefits,[2] and that on that date the Administration's operating personnel were directed to terminate payments of retirement insurance benefits, consistent with 42 U.S.C. 402(k)(4). However, apparently due to an error, ter-

[2] It appears that the Administration was aware of the simultaneous entitlement despite the fact that on her disability application of April 20, 1971 the plaintiff incorrectly answered: "No" to the question: "Have you (or has someone on your behalf) ever filed an application for a period of disability or social security benefits before?"

mination of retirement insurance benefits was not effectuated at this time, and payment of retirement insurance benefits continued for the months of August 1971 through February 1972.

10) In March 1972 the Administration discovered through a "systems alert" that is, a computed generated message designed for this purpose, that the termination action attempted on August 3, 1971 had not been effectuated. The Administration then examined the claims folder of the plaintiff and noted that she had received retirement benefit payments in addition to her disability benefits for the months of August 1971 through February 1972. The Administration therefore determined that the plaintiff had been overpaid for seven months at $156.10 a month, totalling $1,092.70.

11) On March 13, 1972 the Administration stopped payment of the plaintiff's retirement benefits beginning with the month of March 1972.[3] Payment of disability benefits was not stopped at this time.

12) On or about March 16, 1972 the Administration's Bureau of Disability Insurance forwarded to the Social Security District Office in Honolulu a letter to the plaintiff, and directed that the District Office personally deliver it to the plaintiff. This letter advised the plaintiff that her disability benefits would be withheld to recoup the overpayment of retirement benefits in the amount of $1,092.70. This letter stated in full as follows:

> "Our records show you received $1,092.70 more in social security benefits than you should have. This amount represents retirement insurance benefits paid to you for August 1971 through February 1972 at $156.10 per month. No retirement insurance benefits were payable to you after July 1971 as you became entitled to disability payments.
>
> If you believe that this determination is not correct, you may request that your case be reexamined. If

[3] This action was effective in April 1972, that is, April was the first month that retirement benefits were not actually paid. Social Security benefits for which an individual is entitled in a given month are actually payable in the following month.

you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make any such request through any social security office. If additional evidence is available, you should submit it with your request.

To recover the overpayment, we shall withhold your benefits beginning with the check you would normally receive in June 1972. The next check that you will receive after the full overpayment has been withheld will be for $91.70. It will be sent to you about Nov. 3, 1972. Thereafter, your regular monthly benefits of $197.40 will be resumed.

Under social security law, any overpayment must be withheld from benefits or paid *back* unless both of the following are true:

1. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*

2. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason.

To decide whether repayment would cause you financial hardship, we shall need a statement of your assets, and monthly income, and expenses. If you think you meet both conditions, call, write, or visit any social security office within 30 days from the receipt of this letter. Please take this letter with you if you visit the office. Unless we hear from you within 30 days, we shall withhold benefits as indicated above." (Emphasis original)

13) Administrative records in the claim folder indicate that the letter referred to in the preceding paragraph was personally delivered to the plaintiff's home on April 28, 1972. The record also reflects that since the plaintiff was not home at the time, the letter was left with the plaintiff's sister-in-law.

14) On May 24, 1972, the Bureau of Disability Insurance mailed the plaintiff another letter again advising her that her disability benefits would be withheld for the months of May 1972 through September 1972 and part of October 1972 to recover the overpayment of $1092.70.

15) The Administration's action to recover the overpayment to the plaintiff was effective in June 1972; that is, the first disability insurance payment to be withheld to recover the overpayment was the payment which would normally have been received on or about June 3, 1972.

16) In a letter to the Administration dated June 27, 1972 the plaintiff stated in part: "I am sorry about the misunderstanding and error which gave me an overpayment on my social security. I wish to repay the overage [*sic*] * * *." The plaintiff then stated in this letter that withholding her entire benefit check would cause her hardship. She requested the Administration to withhold $50.00 a month rather than the entire benefit check.

17) Administration records show that on July 3, 1972 Mr. Stan Levin, an attorney representing the plaintiff, contacted the Honolulu District Office concerning the Administration's overpayment action in the plaintiff's case. At that time Mr. Levin requested that benefit payments to the plaintiff be resumed immediately; however no request for waiver or reconsideration was filed at that time. Mr. Levin was given the appropriate forms (the "Refund Questionnaire" and the "'Without Fault' Questionnaire") for supplying the information to establish a basis for waiver of recovery of the overpayment. Mr. Levin apparently advised Administration personnel at that time that he would arrange to have the plaintiff complete these forms and would mail them to the District Office.

18) On or about August 4, 1972 the plaintiff requested reconsideration of the Administration's overpayment determination. She stated as her reason for this request: "I merely received notification that there had been an overpayment of disability benefits. I do not know why there had been an overpayment and have never had a chance to find out why. I would like to have a hearing

on this matter." In addition on August 4, 1972 the plaintiff requested that the Administration waive recovery of the overpayment. In support of the request for waiver the plaintiff filed a "'Without Fault' Questionnaire" and a "Refund Questionnaire" explaining her financial status. In the "'Without Fault' Questionnaire" the plaintiff stated that she accepted the full payment of both disability insurance benefits and retirement insurance benefits because she believed she was entitled to both payments. Also on August 4, 1972, the plaintiff requested an evidentiary hearing on the overpayment determination to be conducted by an administrative law judge pursuant to 20 C.F.R. 404.917. She stated as her reason for this request: "I have never had a chance to dispute the cutoff of my benefits and do not believe that my whole check (or even part of it) should be taken pending a hearing. I think Soc. Sec. has the burden of proving I am not entitled to benefits."

19) The claims folder contains a letter dated August 9, 1972, received in the Honolulu District Office August 10, 1972, from Peter A. Lee of the Legal Aid Society of Hawaii. In this letter Mr. Lee stated that the plaintiff had received a letter on April 28, 1972 hand-delivered by an agent of the Social Security Administration, advising her of the Administration's intent to recoup an alleged overpayment. Mr. Lee's letter further stated that the plaintiff had apparently lost the letter which had been delivered to her on April 28, and requested the Administration to send him a copy of the letter.

20) In a written notice to the plaintiff dated August 10, 1972 the Administration advised the plaintiff that in accordance with her request for partial rather than full withholding of her disability benefits, only $50.00 a month would be withheld from benefits due for the months of May 1972 through January 1974. This notice further advised the plaintiff that $42.70 would be withheld from the benefit due for February 1974; and that effective with the benefit payable for the month of March 1974, her regular monthly benefit of $197.40 would be resumed. This notice also advised the plaintiff

that she would shortly be sent a check for $442.20, representing benefits due her through July, 1972—i.e., that the May, June, and July benefits which previously had been fully withheld were being reinstated minus $50.00 withheld for each of those months. ($197.40—$50.00 for three months).

21) On or about August 10, 1972 the Administration issued the plaintiff a check for $442.20, in accordance with its notice to her of August 10, 1972.

22) The plaintiff filed this civil action on August 17, 1972, before the Administration could act on her request for waiver or recovery of the overpayment. At a hearing before this court on August 25, 1972, it was agreed that the Secretary would reinstate all social security disability benefits which had been withheld from the plaintiff to recoup the overpayment, and that the Secretary would continue to pay the plaintiff her full disability benefits as they come due, without further recoupment, pending the court's disposition of this civil action.

23) On August 29, 1972, pursuant to the agreement described in the preceding paragraph, the Administration reinstated to the plaintiff all disability benefits which had been withheld for the months of May 1972 through August 1972 to recoup the overpayment to the plaintiff. Accordingly the Administration at that time issued to the plaintiff a check for $200.00 (4 x $50.00) covering this amount. The Administration has resumed payment of the plaintiff's full monthly disability benefits as they come due,[4] and will continue to make such payments pending the court's disposition of this civil action. Administrative action on the plaintiff's request for reconsideration and a hearing have been deferred pending this Department's preparation of the defense of this civil action and the court's disposition of this matter.

24) On January 14, 1971 the Commissioner of the Social Security Administration approved a policy whereby in any case where Title II social security benefits are

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[4] The full amount of the monthly disability benefit being paid to the plaintiff is now $236.90. The benefit amount has been increased due to recent amendments to the Social Security Act.

withheld to recover an overpayment the beneficiary must be advised (at the time he is notified of the Administration's action) of his right to request reconsideration by the Administration of overpayment determination and of the provisions of the Act (42 U.S.C. 404(b)) providing for waiver of recovery of the overpayment in certain specified cases. This policy is also now set forth in the Social Security Regulations: 20 C.F.R. sections 404.502a and 404.907 (37 Federal Register, May 25, 1972). In May 1971 this policy was incorporated into section 5503(a) of the Social Security Claims Manual, which contains instructions to operating personnel as to the processing of social security claims. The pertinent portion of Claims Manual section 5503(a) reads as follows:

> "When it is determined that an incorrect payment has been made, the person liable should be notified in writing (see § 5508 for sample letters). The notice will inform the person of:
>
> "(1) The incorrect payment made, how, and when it occurred. (If the overpayment resulted from the entitlement of another beneficiary, the adversely affected individual(s) must be informed of the name, relationship to the WE, and basis for entitlement of the new beneficiary.)
>
> "(2) The right to request reconsideration of the overpayment determination.
>
> "(3) The required recovery.
>
> "(4) The proposed adjustment or the demand for repayment where adjustment is not possible.
>
> "(5) The waiver provisions of the law (Social Security Act, secs. 204(b) or 1870(c)).
>
> "(6) The availability of partial adjustment or partial refund.
>
> "(7) The need to notify the DO promptly if he feels that the circumstances in this case would justify waiver, partial adjustment, or partial refund."

Section 5503(a) also provides for *personal delivery* of this notice to the beneficiary in all cases where a disabled beneficiary or any member of his family living in his household is overpaid, regardless of the number of monthly benefits involved. Section 5503(a) also provides as a general rule for personal delivery of the notice in nondisability cases where the overpayment is large (exceeding equivalent of six months' benefits) *and* the beneficiary does not have reason to know about the overpayment.

25) Section 5503(a) provides (with two exceptions not pertinent in the case of the plaintiff Evelyn Elliott) that the Administration must give the beneficiary advance notice of action to recover an overpayment, and an opportunity to contest the correctness of such action. The pertinent part of 5503(b) is as follows:

> "Before we start to adjust the overpayment against the benefits due a beneficiary, he or his payee will normally be given reasonable opportunity to contest the correctness of the determination or to establish that a basis exists for waiver or partial adjustment. The notice to the beneficiary will advise him that adjustment will be deferred 30 days. However, actual adjustment may at the discretion of the reviewing office be extended to a longer period when the facts in a given case, including but not limited to time case is being worked, cutoff dates, mailing time, etc., indicate that a 30-day period would be inadequate for consideration of the matter and reply by the beneficiary and reviewing office processing time."

26) Section 5503(c) of the Social Security Claims Manual provides in pertinent part:

> "If the person responds raising some question about the correctness of the determination of overpayment, or raises a question about recovery, waiver or partial adjustment, the DO will obtain the necessary evidence and prepare a recommendation to the reviewing office for disposing of the case. *Thus, if the person liable requests reconsideration of the substantive*

determination and it appears that the determination will be affirmed, the DO will develop the possibility of waiver of adjustment or recovery of the overpayment at the same time it receives evidence to resolve the request for reconsideration. This is necessary since, if the substantive determination is affirmed the Reconsideration Determination will cover both issues (§ 8737).

"Where reconsideration of the overpayment determination, waiver, or partial adjustment development is initiated, withholding to recoup the overpayment will be further deferred and payment will be continued until development has been completed, if the beneficiary is otherwise entitled to benefits. If development will not be completed before the expiration of the 30-day period, the DO will utilize teletype to advise the reviewing office." (Empasis original)

The effect of the foregoing provisions of Claims Manual section 5503(c) when a beneficiary questions the correctness of the overpayment determination, is to delay any recoupment of an overpayment until there has been a reconsideration determination of the overpayment determination and an initial determination with respect to waiver.

27) As demonstrated in paragraph 12, supra, the Administration's notice to the plaintiff complied with the requirements of Claims Manual Section 5503 set forth in paragraphs 24-26, supra, in every respect except that the plaintiff was not notified of the possibility of partial adjustment. As paragraph 13, supra demonstrates, this notice was personally delivered to her home on April 28, 1972, which was over 30 days before the Administration took action to recover the overpayment by withholding the plaintiff's disability benefits. The plaintiff was afforded the requisite advance notice of the Administration's proposed action, and was advised of her right to reconsideration and to establish that she qualified for waiver, and was informed that she should contact the Administration within 30 days if she wished to question the Administration's proposed action. However, as shown

in paragraph 16, supra, the plaintiff did not contact the Administration until June 27, 1972, almost two months after she received the notice, and almost a month after the Administration had stopped her benefit payments. When the plaintiff finally did contact the Administration on June 27, 1972 she did not protest the overpayment determination in any manner, nor did she ask for waiver; on the contrary she stated that she wished to repay the overpayment. She asked for partial rather than full adjustment of her benefit payments. Five weeks later the Administration granted this request restoring to her all benefits previously withheld which had exceeded the partial adjustment requested by the plaintiff. See paragraphs 20-21. The plaintiff did not request reconsideration or waiver of recovery of the overpayment until August 4, 1972. The Administration was continuing to recoup the overpayment at the rate of only $50 a month, as requested and authorized by the plaintiff, at the time this civil action was filed on August 17, 1972.

28) Sections 404.901 et seq. of Social Security Administration Regulations No. 4, 20 C.F.R. 404.901 et seq. set forth a four-step administration process including an initial determination, (section 404.905 of Social Security Administration Regulations No. 4, 20 C.F.R. 404.905); a reconsidered determination (section 404.914 of Social Security Administration Regulations No. 4, 20 C.F.R. 404.914); an administrative hearing *de novo* before an independent administrative law judge (section 404.917 of Social Security Administration Regulations No. 4, 20 C.F.R. 404.917); review by the Appeals Council of the Social Security Administration, (section 404.945 of Social Security Administration Regulations No. 4, 20 C.F.R. 404.945). After exhaustion of these administrative remedies section 205(g) of the Act, 42 U.S.C. 405(g) provides for judicial review.

29) Section 205(l) of the Social Security Act, 42 U.S.C. 405(l) authorizes the Secretary to delegate his powers under Title II as follows:

"The Secretary is authorized to delegate to any member, officer, or employee of the Department of Health,

Education, and Welfare designated by him any of the powers conferred upon him by this section, and is authorized to be represented by his own attorneys in any court in any case or proceeding arising under the provisions of subsection (e)."

30) The Secretary has delegated the responsibility for administering the social security program under Title II to the Commissioner of the Social Security Administration. 33 FR 5836, April 16, 1968. This authority may be redelegated. 33 FR 5837, April 16, 1968.

31) There are six regional Payment Centers of the Social Security Administration located in New York, Philadelphia, Chicago, Birmingham, Kansas City, and San Francisco. The six regional Payment Centers are charged with the responsibility of rendering initial and reconsideration determinations in claims for dependents, retirement, and survivors insurance benefits, determining continuing eligibility, maintaining claims and benefit accounts and related processing and accounting controls, and certifying benefit payments. As noted in paragraph 2 above, the Bureau of Disability Insurance in Baltimore has comparable responsibilities with respect to disability claims. The Social Security Administration Payment Centers (including the Bureau of Disability Insurance's Payment Center in Baltimore) have over 13,000 employees and have responsibility for the final adjudication and certification of benefits totaling over 31 billion dollars a year to approximately 27 million retirement, survivors and disability beneficiaries. 33 FR 5835, April 16, 1968.

32) The Reconsideration Branch in each of the six regional Payment Centers has responsibility for determining in retirement, survivors, and dependents claims, whether an overpayment has been made and whether waiver would be applicable. Where a disbility claim is involved, the Division of Continuing Entitlement and the Division of Benefit Payments in the Bureau of Disability Insurance's Payment Center determines whether an overpayment of disability benefits has been made; the waiver determination is made by the Bureau of Disability Payment Center's Division of Reconsideration. The various offices are composed of employees specially trained to handle the issues which arise in these types of cases. The Payment Centers maintain complete files of legal and administrative precedents dealing with these questions, so that each Payment Center has available to it the materials necessary for proper and expeditious adjudication.

33) In fiscal 1969, 3,195,515 claims for retirement, dependent, and survivors claims were processed. Of these, 2,951,780 claims were allowed initially and 243,735 were disallowed. There were 37,867 requests for reconsideration and of these 24,906 were allowed (mostly on the basis of newly submitted evidence) and 12,961 were again disallowed. There were 3,252 requests for hearing.

34) In fiscal 1971, 950,571 disability claims were processed. Of these, 393,464 were allowed initially and 557,107 were denied initially. There were 127,801 requests for reconsideration processed in disability cases, and of these claims 48,216 were allowed (mostly on the basis of newly submitted evidence) and 79,585 were again denied. There were 39,800 requests for a hearing in disability cases.

35) In 1969 there were 2,860,287 termination actions and approximately 320,444 suspension actions were taken in retirement, dependent and survivors cases. Excluding terminations for death, attainment of age 18, 22 or 65, withdrawal of application and entitlement to equal or larger benefits, the remaining terminations in 1969 were 515,189. In 1971 the Administration made 38,000 initial determinations that disability had ceased.

36) The Social Security Administration has made the following estimates with respect to overpayments:

(a) In 1970 there were overpayments in approximately 1,250,000 cases.

(b) Of these 1,250,000 overpayments there were requests for reconsideration in approximately 12,000 cases.

(c) Of the 12,000 reconsideration determinations with respect to overpayments there were approxi-

mately 8,250 reversals and approximately 3,750 affirmances.

(d) Of the 3,750 reconsideration affirmances with respect to overpayments there were requests for hearing in approximately 1,600 cases.

(e) Of the 1,600 cases that went to hearing with respect to overpayments there were reversals in approximately 560 cases and affirmances in 1,040 cases.

37) From July 1, 1970 through May 31, 1971 the total number of overpaid cases in the old-age, survivor's and disability insurance program where overpayments could not be waived and whose accounts were determined by the Administration to be uncollectable was 22,162. The total amount of money lost to the Retirement and Survivor's Trust Fund and to the Disability Trust Fund that year due to unrecovered overpayments was $5,784,039. The Social Security Administration estimates that less than half of erroneous overpayments are recovered.

/s/ Bernard Popick
BERNARD POPICK,
Director

Subscribed and sworn to before me
this 12th day of December 1972.

/s/ Dorothy H. Lamont
Notary Public

My Commission expires July 1, 1974

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT *and* BENITO MOLINA, Individually and on behalf of all others similarly situated, PLAINTIFFS

v.

ELLIOTT L. RICHARDSON, Individually and in his capacity as Secretary, United States, Department of Health, Education, and Welfare; and SUNG DAI SEU, Individually and in his capacity as Pacific Area Manager, Social Security Administration, Department of Health, Education, and Welfare, DEFENDANTS

AFFIDAVIT OF BERNARD POPICK

BALTIMORE COUNTY)
) ss.
STATE OF MARYLAND)

I, Bernard Popick, being duly sworn, depose and say as follows:

I am the Director of the Bureau of Disability Insurance of the Social Security Administration, Department of Health, Education, and Welfare, which has the responsibility for the nationwide administration of the disability insurance program under Title II of the Social Security Act. The Bureau of Disability Insurance determines policies applicable to the administration of the disability program, reviews initial determinations of disability claims rendered by State Agencies in accordance with agreements entered into pursuant to 42 U.S.C. 421, and upon request by the claimant will undertake reconsideration determinations of disability claims which have been initially disallowed. Where a disability beneficiary or dependent entitled to benefits may have been overpaid, the Baltimore Disability Payment Center renders de-

terminations regarding overpayments in such cases and upon request of the beneficiary will determine whether recovery of an overpayment may be waived pursuant to section 204(b) of the Social Security Act, 42 U.S.C. 404(b).

In connection with my official duties I have custody of the claims folders of Raymond Gaines, Umeyuki Taniguchi, Hiroko Shimabukuro, Carl and Nancy Yamasaki and Lorraine Robinson, who have filed affidavits with the court on their behalf. My examination of their folders reveal the following:

I. *Raymond Gaines*

(1) Raymond Gaines, born January 6, 1910, initially filed an application on November 18, 1971, for retirement insurance benefits under section 202(a) of the Social Security Act, 42 U.S.C. 402(a). Such benefit entitlement was established for Mr. Gaines in the amount of $73.60 monthly effective January 1972 upon his attainment of age 62.

(2) Mr. Gaines thereafter filed an application for disability insurance benefits on February 25, 1972, alleging disability from June 6, 1971. On the basis of this application he was found entitled to a period of disability beginning September 15, 1971. Where a beneficiary becomes simultaneously entitled to disability benefits and retirement benefits, pursuant to section 202(k)(4) of the Act, 42 U.S.C. 402(k)(4), he may be paid only the larger of the two for any month. Accordingly, Mr. Gaines was awarded disability insurance benefits of $104.20 monthly effective April 1972 (following a six month waiting period after onset of disability pursuant to section 223(c)(2) of the Act, 42 U.S.C. 423(c)(2)). Mr. Gaines' disability monthly rate was increased to $125.40 effective September 1972 in accordance with legislative enactment.

(3) On November 14, 1972, Mr. Gaines' October 1972 disability benefit check payable on November 3, 1972, was returned on the basis of an incorrect address. To decrease the incidence of lost checks and to ensure that

checks are timely received as possible by proper beneficiaries, when a check is returned to the Administration as undeliverable, the centralized computer system of the Social Security Administration will automatically suspend benefit payments pending an investigation to ascertain the beneficiary's correct address. Because of the return of Mr. Gaines' October check, further payments were so suspended.

(4) Mr. Gaines contacted the Honolulu Social Security District Office inquiring of his check payable October 1972. In response to this inquiry, on December 18, 1972, action was taken to issue an "one check only" payment of $250.80 to Mr. Gaines in substitution of the checks payable in October and November 1972. This action was manually prepared by the Baltimore Disability Payment Center so that payment could be expedited and that check was sent to him at his correct address on December 22, 1972. By a manual procedure Mr. Gaines was also placed on a continuing pay status effective January 1973 and his December 1972 benefit was paid to him by a check issued on January 3, 1973.

(5) While the manual actions described in paragraph 4 above were being undertaken to respond to plaintiff's request that his benefit payments be resumed, on January 4, 1973 the Honolulu, Hawaii District Office submitted a change of address for the wage earner to the Baltimore Disability Payment Center which, by machine processing, automatically generated resumption of Mr. Gaines' previously suspended benefits and a check for $376.20 issued on January 9, 1973 representing benefits for October through December 1972. Because of such manual and automatic processing, Mr. Gaines received duplicate payments for October, November and December 1972 giving rise to an overpayment of $376.20.

(6) The "one check only" payment of $250.80, issued as a result of manual processing on December 18, 1972, was returned to the Administration by Mr. Gaines on February 6, 1973. Because it was not discerned at the Payment Center that a duplicate payment check was returned rather than a properly issued check being unde-

livered, a similar check was reissued by machine processing on February 8, 1973 to Mr. Gaines' current address. Consequently, no part of the overpayment was then recovered.

(7) On February 12, 1973, Mr. Gaines was notified by letter of the overpayment which had been caused by the duplicate payments. At that time he was also advised of the proposed recovery of this overpayment and advised that his future benefit payments would be adjusted to recoup the overpayment if he did not respond to the overpayment determination within 30 days. He was further advised of his right to seek reconsideration of the overpayment determination by filing a request therefor within 6 months, and of his right to receive consideration for waiver. This letter reads as follows:

> Our records show you received $376.20 more in social security benefits than you should have. You have received duplicate payments of $125.40 for October through December 1972.
>
> If you believe that this determination is not correct, you may request that your case be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make any such request through any social security office. If additional evidence is available, you should submit it with your request.
>
> To recover the overpayment, we shall withhold your benefits beginning with the check you would normally receive in June 1973. The next check you will receive after the full overpayment has been withheld will be for $125.40. It will be sent to you about September 3, 1973. Thereafter, your regular monthly benefits of $125.40 will be resumed.
>
> Under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:
>
> 1. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*

> 2. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason.
>
> To decide whether repayment would cause you financial hardship, we shall need a statement of your assets, and monthly income and expenses.
>
> If you think you meet *both* conditions or if withholding the entire amount of your monthly benefit will cause you financial hardship, call, write, or visit any social security office within 30 days from the receipt of this letter. Please take this letter with you if you visit the office. Unless we hear from you within 30 days, we shall withhold benefits as indicated above.

(8) Mr. Gaines has not yet responded to the letter of February 12, 1973, nor requested reconsideration or waiver and has not submitted additional evidence on his behalf. Under existing procedures Mr. Gaines' benefits are now subject to recoupment of the overpayment as indicated in the letter set out in paragraph 7. Because Mr. Gaines is now involved in this pending court action, Mr. Gaines has been continued in payment status with recoupment of the overpayment deferred.

II. *Umeyuki Taniguchi*

(1) With respect to an application filed May 29, 1968, entitlement to a period of disability was established for Umeyuki Taniguchi beginning April 18, 1968 due to cervical disc degeneration. He and his family (for whom applications were also filed) received monthly benefit payments of $307.20 effective November 1968 (following a six month waiting period after onset of disability pursuant to section 223(c)(2) of the Act, 42 U.S.C. 423(c)(2)). By legislative amendments the total monthly disability benefit level to Mr. Taniguchi and his family increased to $353.70 effective January 1970; increased to $389.20 effective January 1971; increased to $467.10 effective September 1972. The increased levels for Mr.

Tanigcuhi and his family have not yet been computed with respect to the Social Security Amendments of 1972 (P.L. 92-603).

(2) On February 12, 1970 Mr. Taniguchi reported to the Administration that beginning December 16, 1969 that he had been awarded temporary workmen's compensation, in connection with his disability, in the sum of $92.30 weekly ($92.30 x 4.33 = $399.77 monthly). Section 224 of the Social Security Act, 42 U.S.C. 424, requires that disability insurance benefits be reduced in accordance with the formulae contained therein on the basis of a beneficiary receiving workmen's compensation benefits. On March 30, 1970 disability benefit payments of $353.70 monthly to Mr. Taniguchi and his family were reduced to $71.40 monthly. Effective January 1971 the monthly disability benefit to Mr. Taniguchi and his family increased by $35.50 by legislative enactment raising the total payable to $106.90 monthly.

(3) On September 8, 1972, the Fireman's Fund American Insurance Company reported to the Social Security Administration that Mr. Taniguchi had been awarded a final workmen's compensation settlement of $25,000 effective June 23, 1972.

(4) On October 24, 1972 Mr. Taniguchi and his family were sent letters advising that their benefits had not been properly adjusted since July 1969 in light of Mr. Taniguchi having received workmen's compensation payments of $92.31 weekly since that time, and which was increased to $103.71 weekly effective July 1972. Upon revision of social security benefit rates payable since July 1969 with respect to Mr. Taniguchi's receipt of workmen's compensation since that time, they had been found to have been overpaid a total of $572.20 (Mr. Taniguchi $49.00 and his wife and two children $174.40 each). They were further advised at that time that an adjustment was made for the correct monthly benefit amount to be made payable. Recovery of the overpayment which had occurred would begin with the check that would otherwise be payable in February 1973. Mr. Taniguchi and his family were further advised of their appeal

rights of reconsideration, waiver, and a 30 day period within which to respond and submit evidence so that benefits would not be withheld for recoupment (Exhibits A and B).

(5) On December 4, 1972 Mr. Taniguchi furnished a statement to the Honolulu Social Security District Office saying: "If I must repay this overpayment ($572.20) please withhold only $50 a month total from our total benefits. I need the balance of our family payments to live on."

(6) A further review of Mr. Taniguchi's claims folder in February 1973 revealed that an incorrect computation of his 1962 earnings was made which resulted in an accrued underpayment since July 1969 totalling $1,542.40.

(7) On March 5, 1973 Mr. Taniguchi was advised by letter of the underpayment and that he would be sent a check for $1,542.40 shortly. Revised social security benefit rates payable in light of such error were also furnished with regard to which the underpayment was arrived at. Mr. Taniguchi was advised as follows: "Due to a processing error, the amount of social security benefits withheld due to your receipt of workmen's compensation was incorrectly figured. You are due $102.40 for July through December 1969, $124.80 for January through December 1970, $142.00 for January 1971 through August 1972, and $179.70 for September 1972 on. Based on this determination, you are no longer overpaid."

III. *Hiroko Shimabukuro*

(1) With respect to an application filed on June 19, 1963, entitlement to a period of disability was established for the wage earner, Roy Shimabukuro, on October 18, 1962 due to blindness. The wage earner, wage earner's wife Hiroko, and five children, Rick H., Norene R., Gary R., Mile T., and Rory S., (with respect to applications filed on their behalf) all became entitled to benefits also effective May 1963 (following a six month waiting period after onset of disability pursuant to section 223(c)(2) of the Act, 42 U.S.C. 423(c)(2).

(2) In April 1965 Rick H. Shimabukuro's benefits were terminated because of attainment of age 18. In August 1969 Gary R. Shimabukuro's benefits were terminated because he ceased to be a full-time student. Mike T. Shimabukuro's benefits terminated in May 1971 because of attainment of age 18. Norene R. Shimabukuro ceased to be eligible for benefits in June 1971 when she attained age 22. Child's benefits are terminated on the basis of such post-entitlement events pursuant to section 202(d) of the Act, 42 U.S.C. 402(d).

(3) In September 1972 Mrs. Shimabukuro inquired of the Social Security Administration whether she should be receiving her full monthly benefit in view of her work activities and earnings in 1971. From May 1971 when less than three dependents of the wage earner had been receiving benefits it was ascertained that work deductions could be imposable thereafter.[1] On the basis of Mrs. Shimabukuro presenting information of current work activity, she was placed in current suspension status effective October 1972.

(4) At the request of the Honolulu Social Security District Office, Mrs. Shimabukuro submitted annual reports of work activity for 1970 and 1971 on which she informed of earnings for 1970 in the amount of $5,702.21 in 1970 and $6,341.24 in 1971; earnings for 1972 were estimated to be $6,500. On the basis of these reports it was ascertained that Hiroko Shimabukuro had been overpaid $709.10 in 1971 and was incorrectly paid $859.30 for the period January 1972 through September 1972.

(5) On November 27, 1972 Mrs. Shimabukuro was advised by letter explaining the nature of the overpayment as follows:

[1] In most cases where there are less than three entitled dependents, total family benefits would not exceed and then be reduced to the family maximum payable on the wage earner's earnings record in accordance with section 203(a) of the Act, 42 U.S.C. 403(a). In such cases where more than two dependents are entitled to benefits and the total family amount is reduced to the family maximum payable by reduction to each dependent, other dependent beneficiaries' benefits on the wage earner's earnings record may be increased for a month where one dependent beneficiary has work deductions thus keeping the family maximum payable intact.

> Due to the termination of benefits payable to Mike in May 1971, the provisions of the Social Security Act under which you were receiving your full monthly benefit while working and earning over $140.00 each month no longer apply. You are entitled to receive a partial [amount] of $25.40 for May 1971.
>
> Due to the termination of benefits payable to Norene effective June 1971, you are no longer entitled to receive any benefits for any month you earn over $140.00. Since you received $93.40 for June 1971 through August 1972 and $112.10 for September 1972, you have been over paid $709.10 for 1971 and incorrectly paid $859.30 for January 1972 through September 1972.
>
> Final adjustment for 1972 will be made when we receive your 1972 annual report.

Since Mrs. Shimabukuro was put in current suspension status in light of present work activity, the notice did not advise of recoupment of any of the overpayment or seek refund which was to await Mrs. Shimabukuro's 1972 annual report to be filed on or before April 15, 1973. Because no recoupment action or refund was proposed, no determination had been issued with respect to which she would have rights of appeal and waiver.

(6) Mrs. Shimabukuro's entitlement to mother's insurance benefits terminated effective February 1973, pursuant to section 202(b) of the Act, 42 U.S.C. 402(b), upon her youngest child Rory attaining age 18 and no longer being entitled to child's insurance benefits.

(7) On February 9, 1973 Mrs. Shimabukuro completed a "refund" and a "without fault" questionnaire in connection with a request that the overpayment be waived. She stated that she was totally unaware that any overpayment was being created because she had been receiving benefits when she began working without deductions being imposed against her benefits. She inquired of the Administration regarding continuing receipt of benefits while working after discussing payments with a friend in similar circumstances who did not receive such pay-

ments. Additionally, she furnished information pertaining to her income and expenses.

(8) On April 7, 1973, with respect to Mrs. Shimabukuro's request for waiver on grounds that she was without fault in giving rise to the overpayment and that recovery would cause hardship, Mrs. Shimabukuro was informed that the incorrect social security payments of $1,568.40 were not required to be refunded.

IV. *Carl and Nancy Yamasaki*

(1) Carl Yamasaki, the wage earner, applied for disability insurance benefits on October 16, 1968, alleging disability from June 15, 1966, at age 24, due to a back injury. Disability was established with an onset date of June 15, 1966. The wage earner and dependents, his wife Nancy and his child Stacy (with respect to applications filed on their behalf) were found entitled to benefits beginning in October 1967, 12 months retroactive to the month in which the application was filed (the earliest month for which benefits could be paid in accordance with section 223(b) of the Act, 42 U.S.C. 423(b)).

(2) Mr. Yamasaki also was awarded workmen's compensation payments in connection with his disability, receiving payments totalling $19,460.72 for 253 weeks of total disability for the period June 1966 to May 1971; $6,631.59 in permanent partial disability payments beginning in August 1971 ($76.92 weekly); and a $2,050.00 lump sum award for disfigurement.

(3) Section 224 of the Social Security Act, 42 U.S.C. 424, requires that disability benefits be reduced in accordance with the formulae contained therein on the basis of a beneficiary receiving workmen's compensation benefits. With respect to such provision, Mr. Yamasaki's disability benefit was reduced to $29.70 monthly effective February 1972 and that of his wife and child $10.60 monthly each. Because of a processing error of the Social Security Administration, Nancy Yamasaki received $40.30 monthly from February 1972 through August 1972 and was thus overpaid $207.90 during that period.

Payments to Mr. Yamasaki and his child were correctly made and they have not been overpaid.

(4) On October 2, 1972, Nancy Yamasaki was advised by letter that she had received an overpayment of $207.90. She was informed of her right to request reconsideration within 6 months and of her right to request consideration of waiver of the overpayment and the applicable conditions which must be met before waiver would apply. She was also informed that withholding of the overpayment would begin unless she contacted the Social Security Administration within 30 days (Exhibit C).

(5) The records of the Social Security Administration do not reveal that Mrs. Yamasaki responded to the letter of October 2, 1972 within 30 days as advised therein to request reconsideration or consideration for waiver. On November 10, 1972 the Honolulu District Office, in an apparent response to an inquiry by the wage earner requesting information concerning the amount of the overpayment, requested that the Bureau of Disability Insurance furnish an explanation of the benefits paid to the family from March 1972 to the present. On December 6, 1972 the Bureau of Disability Insurance informed the District Office that incorrect payments to Mrs. Yamasaki had been made of $29.70 for months February through August 1972.

(6) Because no request for reconsideration or consideration for waiver had been made within the 30 day period as advised in the notice of October 2, 1972, Mrs. Yamasaki was further notified by letter of January 8, 1973 of withholding of her benefit payments of $20 monthly for December 1972 through September 1973 as recoupment of the overpayment (Exhibit D).

(7) On January 11, 1973, the Honolulu District Office was advised by the insurance carrier which paid Mr. Yamasaki workmen's compensation payments that such payments terminated on May 1, 1972, rather than in August 1972 as previously reported. Full social security benefit payments without reduction with respect to workmen's compensation payments could then be made to Mr.

Yamasaki and his family for months May through August 1972.

(8) On March 12, 1973, Mr. and Mrs. Yamasaki were notified that they and their child had become entitled to full benefit payments effective May 1972. They were advised a check would issue shortly in the amount of $1,324.60 and that their total monthly benefit payment would be $290.60 thereafter ($169.40 to the wage earner, and $60.60 each to his wife and child). Mr. and Mrs. Yamasaki were advised of the increased benefit amounts as follows:

> "Your benefits have been increased to $141.10 for May through August 1972, $169.40 for September 1972 through February 1973. Your wife's and child's benefits have been increased to $50.50 each for May through August 1972 and $60.60 each for September 1972 through February 1973. We have paid you the difference of what was paid and what is now payable. Your child will receive a check shortly in the amount of $399.00 which represents benefits May 1972 through February 1973; thereafter, $60.60 will be sent monthly. Due to the increase, your wife's overpayment has been adjusted."

(9) On April 16, 1973 a further communication was sent to Mrs. Yamasaki as follows: "Due to an error in processing, Stacy's monthly benefit for March 1973 was paid at the old rate. We are expediting additional benefits for March 1973 and you will receive a check shortly for $39.90. We are sorry for any inconvenience caused you.

We have also corrected the name and address on the check for you and your husband that will be paid on May 3, 1973."

Upon this action being taken, the wage earner and his family were all in payment status of their full and correct benefit amounts.

V. *Lorraine Robinson*

(1) The wage earner, Alexander Robinson, born February 28, 1918, filed an application for disability insurance benefits on September 21, 1971, and was determined to be disabled as of May 15, 1971 due to chronic pulmonary disease. He and his wife (with respect to an application filed on her behalf) also became entitled to benefit payments effective December 1971 (following a six month waiting period after onset of disability pursuant to section 223(c)(2) of the Act, 42 U.S.C. 423 (c)(2)).

(2) On November 18, 1971 Mr. Robinson advised the Social Security Administration that he had a pending claim for workmen's compensation and stated: "I understand that if my workmen's compensation is awarded, I may have to reimburse the Social Security Administration my social security money. I agree to do so. I will notify you of my workmen's compensation decision when it is received."

(3) An award of entitlement to disability insurance benefits to Mr. Robinson was established on July 27, 1972 effective December 1971 in the amount of $165.50 monthly, and a check to Mr. Alexander issued in August 1972 in the amount of $1,324 for the months December 1971 through July 1972.

(4) In response to a request of the Bureau of Disability Insurance on August 28, 1972, the insurance carrier advised that Mr. Robinson had been awarded temporary total workmen's compensation payments of $112.50 weekly or $112.50 x 4.33 = $487.50 monthly) for an indefinite period effective May 22, 1972. Section 224 of the Social Security Act, 42 U.S.C. 424, requires that benefits be reduced in accordance with the formulae contained therein on the basis of a beneficiary receiving workmen's compensation payments. On October 22, 1972, Mr. Robinson was advised by letter of an overpayment of disability of $662.00 because of receipt of workmen's compensation payments from June through September 1972 resulting in his benefits of $165.50 being reduced to zero for those months (he was, however, entitled to

the amount of the legislative increase in 1972 of $33.10 to his base benefit rate effective with the month September 1972). The notice of Mr. Robinson on October 22, 1972 further advised of appeal rights to reconsideration, waiver and a 30 day period within which to respond and submit evidence so that benefits would not be adjusted for recoupment (Exhibit E).

(5) Entitlement to benefits for Mrs. Lorraine Robinson on Mr. Robinson's earnings record was established for the first time on October 16, 1972 and the offset to her benefits resulting from her husband receiving workmen's compensation payments was applied prior to any payments having been made to her. For the period December 1971 through May 1972 her benefit rate was $82.80 monthly and this was reduced to zero for the period June 1972 through August 1972. Effective September 1972 she could realize a legislative increase to her base benefit rate in the amount of $16.50 monthly.

(6) On November 9, 1972, Mrs. Robinson was advised of the initial payment to her in the amount of $529 representing benefits of $82.80 for months December 1971 through May 1972 and $16.50 for months September 1972 and October 1972 (Exhibit F). With respect to such entitlement no suspension or actions have been made to benefit amounts upon payments being instituted, nor has Mrs. Robinson been found to have been overpaid.

/s/ Bernard Popick
BERNARD POPICK, Director
Bureau of Disability Insurance
Social Security Administration

Subscribed and sworn to before me
this 2nd day of May 1973.

/s/ Mary A. Brennan
MARY A. BRENNAN
Notary Public

My Commission expires June 30, 1974.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT and BENITO MOLINA, Individually and on behalf of all others similarly situated, PLAINTIFFS

v.

ELLIOT L. RICHARDSON, Individually and in his capacity as Secretary, United States, Department of Health, Education, and Welfare; and SUNG DAI SEU, Individually and in his capacity as Pacific Area Manager, Social Security Administration, Department of Health, Education, and Welfare, DEFENDANTS

AFFIDAVIT OF JAMES E. FORBUS

BALTIMORE COUNTY)
) ss
STATE OF MARYLAND)

I, James E. Forbus, being duly sworn, depose and say as follows:

I am the Deputy Director of the Bureau of Retirement and Survivors Insurance of the Social Security Administration, and as such, am responsible for the formulation of policies and procedures whereby retirement, dependent and survivors' claims and related policies as affect disability claims under Title II of the Social Security Act are adjudicated. As Deputy Director of the Bureau of Retirement and Survivors Insurance, I am responsible also for the supervision of the Payment Centers of the Social Security Administration in their adjudication of Title II claims.

In connection with my official duties I have custody of the claims folders of Jordan A. Silva, Isabelle Ortiz, and John V. Vaquilar who have filed affidavits with the court on their behalf. My examination of their folders reveal the following:

I. *Jordan A. Silva*

(1) Jordan A. Silva filed an application for retirement benefits on November 6, 1963 and was awarded benefits in the amount of $64 monthly effective February 1964 when he became age 62. Periodically benefit levels have been increased by legislative enactment and are also recomputed periodically when a beneficiary has additional earnings posted to his earnings record. Mr. Silva's present monthly benefit is $155.30. Mr. Silva had worked and had earnings during the years 1964 through 1967 and his benefits during such years were adjusted with respect to earnings in excess of statutory levels contained in sections 203(b) and (f) of the Act, 42 U.S.C. 403(b) and (f).

(2) A present overpayment to Mr. Silva obtains with respect to benefits paid for years 1969 through 1971.

Mr. Silva filed an annual report on March 13, 1969 of earnings for 1968 indicating total earnings in that year of $2,241.70 and that he earned over $140 per month in all months; his statement of estimate of earnings for 1969 was $1,680 ($1,680 was the maximum exempt amount of earnings for which no deductions were imposed against benefits). Since Mr. Silva had not previously filed a report of work during 1968 and was accordingly paid all benefit amounts in that year, he was overpaid $280 for 1968. That overpayment was adjusted against benefits that would be payable to him in 1969. Because he stated he would have no excess earnings for 1969, all other benefits payable during that year were paid to him.

(3) Mr. Silva did not timely file an end of year annual report in 1970 (on or before April 15, 1970) disclosing his actual earnings in 1969. (Because he did not indicate excess earnings for 1969 in his prior estimate, benefits were not currently suspended with respect thereto and a report form was not mailed to him as it would have if he had properly estimated his earnings and been put in a current suspension status). At the request of the Social Security Administration, Mr. Silva filed an annual report for 1969 on October 22, 1970 disclosing total earnings of $2,805.35 for 1969, giving rise to an overpayment of $562 for that year; a penalty of $85.90 was also assessed because of his failure to file an annual

report timely. In the annual report of earnings for 1969 filed on October 22, 1970 Mr. Silva also estimated his earnings for 1970 to be $2,805, and revealed that he was working in October 1970; accordingly, benefits which were paid for October 1970 were not correctly due and he was overpaid $101.20 for that month. Mr. Silva was notified of the overpayments and penalty assessment on November 27, 1970, that benefits were withheld beginning November 1970 to recoup such amounts owed, and he was therein advised of rights to reconsideration and consideration for waiver.

(4) Mr. Silva filed a timely end of year report of earnings for 1970 on February 18, 1971, revealing total earnings of $3,989.26 instead of $2,805 as he noted in the October 1970 report. He therefore was overpaid $1,012 for 1970. About this time the Honolulu District Office coordinated with Mr. Silva's banker employer who indicated that he worked out a budget for Mr. Silva and suggested that no more than $10 be withheld from Mr. Silva's future benefits—otherwise Mr. Silva would again have to continue working in 1971 at a level of excess earnings. Mr. Silva's monthly benefits were thereupon reinstated beginning April 1971 with an amount of $10 withheld for recoupment purposes.

(5) Mr. Silva did not timely file an end of year annual report of earnings for 1971 (on or before April 15, 1972) disclosing his actual earnings in 1971. At the request of the Social Security Administration, he submitted such report on September 5, 1972 revealing total earnings of $3,713.11 for 1971. Because he previously estimated that he would not have excessive earnings in 1971 and all benefits due were paid, he was overpaid $1,433 for that year. He also stated on his report for 1971 an estimate of earnings of $3,000 for 1972, and this also indicated he was presently overpaid for 1972. Mr. Silva stated thereon: "I was not aware that I had to file any report." Benefit payments were suspended effective November 3, 1972 with the benefit for October 1972. Mr. Silva was advised by notice on October 2, 1972 of overpayments for 1971 and 1972 based on his report of earnings (the amounts of the overpayments advised of

are incorrect because in the machine processing, his monthly benefit amount paid was considered a full benefit whereas he in effect received $10 more which was applied toward recoupment of past overpayments). That notice did not refer to overpayments prior to 1971. Mr. Silva was advised of his rights to reconsideration and waiver (Exhibit A).

(6) At the request of the Social Security Administration, Mr. Silva timely filed an end of year annual report of earnings for 1972 on March 13, 1973 in which he stated only his 1972 earnings to be "about $3,000"; information obtained, with the plaintiff's permission, from his employer revealed his earnings to be $3,527.26 in 1972. Because Mr. Silva's benefits in 1972 were suspended for adjustment of past overpayments, he had not been overpaid for 1972.

(7) An assessment of Mr. Silva's account reveals

(a) an outstanding overpayment for 1969 of $562 plus $85.90 penalty

(b) outstanding overpayment of $1012 for 1970

(c) an overpayment of $1433 for 1971 which has been reduced to a current outstanding amount of $508.10 upon withholding benefit increases to Mr. Silva and benefit payments to his wife on his earnings record for whom wife's benefits became payable in May 1971, plus $154.40 penalty for failing to file a timely report for 1971 earnings.

(d) underpayment of $36.60 for 1972.

(e) total outstanding overpayment comes to $2045.50 plus total penalties of $240.30.

(8) Mr. Silva will be further advised of these matters and will be afforded opportunity for reconsideration and consideration of waiver.

II. *Isabelle Ortez*

(1) Isabelle Ortez filed an application for retirement benefits on October 16, 1970 and entitlement to benefits

was established effective September 1970 when she became age 65. She stated on her application that she was working full time for the Armed Forces and expected to have earnings in excess of $140 monthly during the next three months and estimated her earnings for 1971 to be $3,720. She also agreed to file an annual report of earnings for each year in which she was under age 72.

(2) Mrs. Ortez was put in deduction status from September through December 1970 with respect to her monthly benefit amount of $70.40, and continued in deduction status. An award notice issued on November 5, 1970 (Exhibit B) and she was furnished therewith a booklet of Rights and Responsibilities of Beneficiaries (Exhibit C).

(3) On April 27, 1971 the Honolulu Social Security District Office received and processed a work notice from Mrs. Ortez advising that she decreased her work activity to wages of not more than $140 per month beginning June 1971 and estimated her total earnings for 1971 to be $2,500. On the basis of this information, benefits were paid beginning with the payment for June 1971 and she was notified on May 27, 1971 of such payments being instituted. She was further advised that if she did not stop work as planned, she should notify any social security office and that final adjustments in her benefit payments would be made when she filed her annual report of earnings (Exhibit D).

(4) Mrs. Ortez filed an end of year annual report of earnings in January 1972 for 1971 revealing total earnings of $4,316.03 for that year and that she had wages in excess of $140 monthly in all months of 1971 giving rise to an overpayment of $492.80. Mrs. Ortez was notified on February 8, 1972 of the overpayment and adjustment action to be undertaken with respect to subsequent benefit payments and that benefit payments would be resumed in October 1972. She also was advised of her right to reconsideration and consideration of waiver (Exhibit E).

(5) The adjustment action against Mrs. Ortez' benefit payments has been completed as indicated in the notice of February 8, 1972 and benefit payments were resumed

with the payment for September 1972 payable on October 3, 1972. Since that time she has been in full payment status.

III. *John V. Vaquilar*

(1) John V. Vaquilar filed an application for retirement benefits on November 1, 1966 and entitlement to benefits was established effective June 1966, the month he attained age 63.

(2) On March 9, 1967, Mr. Vaquilar filed a timely annual report of earnings for 1966 revealing no excess earnings for that year and did not furnish an estimate of earnings for 1967, therefore he was continued in payment status without suspension.

(3) Mr. Vaquilar did not submit a timely annual report of earnings for 1967 (on or before April 15, 1968). At the request of the Social Security Administration he submitted such a report on September 30, 1968, revealing earnings of $2,828.20 and thereby giving rise to an overpayment of $441 for 1967; he again failed to furnish an estimate of earnings for 1968. He was assessed a penalty of a month's benefit amount for failing to file a timely annual report for 1967. Mr. Vaquilar was advised of the overpayment determination and penalty on December 11, 1968 and an adjustment action was undertaken with respect to his benefits for the 1967 overpayments.

(4) Mr. Vaquilar filed an amended annual report for 1967 on March 27, 1969 advising of total earnings of $2,822.20 for that year and no work activity during the period January 1967 through July 1967. Revisions to the adjustment action were made with respect to the amended report for 1967.

(5) On March 27, 1969, Mr. Vaquilar timely filed an annual report of earnings for 1968 revealing earnings of $7,395 for that year, advising that he did not work in December 1968, and estimating also that he would earn $5,000 in 1969. On the basis of this information he was found to have been overpaid $744.20 for 1968. On May 8, 1969 Mr. Vaquilar was notified of this overpayment and of a revised overpayment of $367.50 attributable to 1967 based on his revised report for 1967. A refund was requested for the total overpayment of $1,111.70. Mr. Vaquilar was put in a deduction status with respect to 1969 earnings.

(6) Mr. Vaquilar filed an annual report on September 24, 1971 for earnings in 1969 (because he did not receive any payments in 1969 this was not subject to the time limitation requirements for filing). He advised of earnings of $7,243 in 1969, that he did not work in January 1969 and that he stopped work effective October 1971. On the basis of this information he was paid a monthly benefit of $106.30 for January 1969 and benefits of $157.30 each for October and November 1971; this was paid by a check in December 1971 in a combined amount of $408.90. Mr. Vaquilar was advised of this payment on December 16, 1971 and advised of rights to reconsideration and consideration for waiver.

(7) Mr. Vaquilar was also issued an erroneous check in December 1971 in the amount of $141.50. He was notified of the error on January 27, 1972 and that adjustment would be made against his benefit payment for February payable on March 3, 1972. He was also advised of rights to reconsideration and consideration for waiver therewith. The adjustment action was thereafter undertaken.

(8) On January 23, 1972 Mr. Vaquilar submitted an annual report of earnings for 1971 stating his earnings to be $6,598.12 and that he did not work during January 1971 through September 1971 (the converse of information contained in his report submitted on September 24, 1971). On the basis of this report Mr. Vaquilar was paid an additional $909.90 for 1971 and he was advised of such payment on March 8, 1972. The notice advised of rights to reconsideration and waiver (Exhibit F).

(9) In response to an inquiry from the Social Security Administration on April 14, 1972, Mr. Vaquilar submitted a statement on May 23, 1972 stating he had made a mistake on his annual report for 1971 and ad-

vised that he earned in excess of $140 monthly January through September 1971. He did not request reconsideration or waiver but asked for relief by partial adjustment as follows:

> "If you *must* withhold from my benefit check, then withhold $80 per month. But I am in need of *all* the benefit amount to help support me and wife and adopted daughter." (Emphasis original)

(10) On November 24, 1972, Mr. Vaquilar was advised that recovery of the overpayment would be made by partial adjustment by withholding $80 monthly from his benefit payment (Exhibit G).

(11) On December 19, 1972 Mr. Vaquilar, assisted by an attorney, contacted the Honolulu District Office and requested reconsideration and waiver consideration. On January 23, 1972 full benefits were reinstated in accordance with section 5503.5 of the Claims Manual (Exhibit H) of the Social Security Administration (operating guide for personnel of the Social Security Administration) and $80 withheld from Mr. Vaquilar's benefit for December 1972 was repaid. Mr. Vaquilar continued in a full payment status pending reconsideration of the overpayment determination and consideration for waiver. Upon conclusion of reconsideration on February 2, 1973, he was found to be overpaid $909.90 for January 1971 through September 1971 because of work and earnings in 1971 and that waiver of recovery could not be granted since Mr. Vaquilar was found not to be without fault in creating the overpayment. Because of his financial circumstances it was further determined that partial adjustment would be undertaken by withholding $40 from his full monthly benefit amount of $201.60 effective with the benefit for February 1973 payable March 3, 1973,

(Exhibit I). Mr. Vaquilar is presently in a payment status with such adjustment.

/s/ James E. Forbus
JAMES E. FORBUS
Deputy Director
Bureau of Retirement
and Survivors Insurance
Social Security Administration

Subscribed and sworn to before me
this 2nd day of May 1973.

/s/ Mary A. Brennan
MARY A. BRENNAN
Notary Public

My Commission expires June 30, 1974.

BUREAU OF RETIREMENT
AND SURVIVORS INSURANCE

REFER TO CLAIM NUMBER 575-12-9643A

DATE: 10/2/72

Jordan A. Silva
3366 Keanu Street
Honolulu, Hawaii 96816

THIS REFERS TO YOUR ANNUAL REPORT OF EARNINGS FOR 1971 AND YOUR WORK REPORT FOR 1972

WHAT YOU REPORTED

EARNINGS IN 1971	MONTHS IN 1971 IN WHICH YOU DID NOT EARN OVER $140 IN WAGES OR PERFORM SUBSTANTIAL SERVICES IN SELF-EMPLOYMENT												ESTIMATED EARNINGS FOR 1972	WORK STATUS AT TIME YOU MADE REPORT
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC		
$ 3713	N	O	N	E									$ 3000	Working

THE STATUS OF YOUR CLAIM AS OF

	TOTAL BENEFITS WHICH SHOULD HAVE BEEN WITHHELD TO DATE	TOTAL BENEFITS ACTUALLY WITHHELD	AMOUNT NEEDED TO ADJUST YOUR CLAIM TO DATE	AMOUNT DUE YOU	REGULAR MONTHLY BENEFIT AMOUNT
1971	$ 1071.60	$ None	$ 1071.60	$ None	$
1972	$ 427.20	$ None	$ 427.20	$ None	$ 104.80

(1) A review of your report shows you received $1071.60 more than you should have for 1971. Your work and estimated earnings for 1972 require that we recover $427.20 in benefits already paid to you this year. To account for both years, we will withhold your monthly benefits beginning 10/72. After the total of $1499.20 has been withheld, you will be due part of your benefit for 12/73. A check for $73.20 will be sent to you shortly after 12/3/73. You will receive your regular payment amount each month after that. Your benefits can begin earlier if you repay the $1071.60 amount. You may do so by check or money order made payable to the Social Security Administration. Please put your claim number on the check or money order.

(2) The above payment amount may be reduced by any unpaid medical insurance premiums due, or increased by any premiums paid in advance at the time you are due your next payment.

If you have questions about your benefits, you may get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit an office, however, please take this notice with you.

Paul W. Quandt

Paul W. Quandt
Director of Operations
Retirement and Survivors Insurance

EXHIBIT A
1 of 2

See The Reverse Side Of This Form

FORM SSA-L760 (12-71)

96-76

If you believe this determination is not correct, you may request that your claim be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request.

1. How Your Work and Earnings Affect Your Benefits

For taxable years ending after December 1972, if you earn $2,100 or less during the taxable year (usually January through December), nothing will be withheld from your benefits.

If you earn more than $2,100 in the year, for each $2 of earnings above $2,100, $1 will be withheld from your benefits.

However, regardless of total earnings in a year, benefits are payable for any month in which you neither earn wages of more than $175 nor perform substantial services in self-employment.

Benefits are also payable for all months in which you are 72 or older, regardless of the amount of your earnings in months after you reach 72.

2. Report Any Significant Change in Your Work and Earnings to Any Social Security Office

The amount of benefits payable to you for this taxable year has been determined on the basis of your work status at the time you made your annual report of earnings for last year and on the amount of earnings you expected for this year as shown on that report. You should report promptly to any social security office any change which will affect your payments, such as:

a. If you go to work while under age 72 and expect to earn over $2,100 in the year;

b. If you have previously reported that you expect to earn over $2,100 from work, but

(1) You stop work, or

(2) You do not earn over $175 for any month and you do not perform substantial services in self-employment, or

(3) You expect to earn substantially more or less than you previously indicated, for the year.

Prompt reports enable us to make adjustments to your benefit payments when you have income from work. Delayed reports make it necessary for us to withhold benefits during periods when you may not have income from work.

Any difference between the amount of benefits withheld based on your estimate of earnings and the amount that must be withheld on the basis of your actual earnings will be adjusted after the close of the year when you file your next annual report.

If you have any questions about reporting, you should get in touch with any social security office.

3. Information About Medical Insurance Premiums

a. When monthly social security benefits are being paid to you—

If your premiums are paid up-to-date, 1 month's premium will be withheld from your benefit check each month.

If you owe premiums for last year, the full amount owed will be withheld from your next check.

If you owe premiums only for this year, only 1 month's premium will be withheld from your next check and at the end of the year we will make an adjustment for other premiums owed.

Any excess premiums paid in advance will be refunded to you in a separate check.

b. When monthly social security benefits are not currently being paid to you—

If this is the first time your benefits are being withheld this year, you will be billed for any premiums you owe.

If your benefits were withheld earlier this year, we will not bill you now: At the end of the year, we will make an adjustment for any premiums due.

4. Information When You Have Been Overpaid

Under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:

a. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*

b. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason.

To decide whether repayment would cause you financial hardship, we will need a statement of your assets, and monthly income and expenses. If you think you meet both conditions or you wish to repay the overpayment by installments or have it withheld from benefits at a reduced rate over a longer period, call, write, or visit any social security office.

(12-72)

BEST COPY AVAILABLE

SAN FRANCISCO, CALIFORNIA 94105

REFER TO CLAIM NUMBER

Isabella L. Ewan
Hana,
Waipahu, HI

THIS REFERS TO YOUR ANNUAL REPORT OF EARNINGS FOR 1971 AND YOUR WORK REPORT FOR 1972

EARNINGS IN 1971	MONTHS IN 1971 IN WHICH YOU DID NOT EARN OVER THE AMOUNT SHOWN IN COLUMN 1 OR PERFORM SUBSTANTIAL GAINFUL SERVICE IN EMPLOYMENT OR SELF-EMPLOYMENT	ESTIMATED EARNINGS FOR 1972	WORK STATUS AT TIME YOU MADE REPORT
	JAN FEB MAR APR MAY JUNE JULY AUG SEPT OCT NOV DEC		

THE STATUS OF YOUR CLAIM AS OF

	TOTAL BENEFITS WHICH AMOUNTS HAVE BEEN WITHHELD TO DATE	TOTAL BENEFITS ACTUALLY WITHHELD	AMOUNT CREDITED TO ABOVE YOUR CLAIM TO DATE	AMOUNT DUE YOU	REGULAR MONTHLY BENEFIT AMOUNT
1971	$44.80		492.80	-	
1972					

A review of your records shows you received $80 more than you should have for 1971. This amount is [illegible] due you. A check for [illegible] is sent to you under [illegible]. You will receive your regular retirement amount each month after that.

If you have questions about your benefits, you may get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit an office, however, please take this notice with you.

EXHIBIT E
1 of 2

Paul W. Quande
Director of Operations
Retirement and Survivors Insurance

See The Reverse Side Of This Form

FORM SSA-L760 (12-71)

If you believe this determination is not correct, you may request that your claim be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request.

1. How Your Work and Earnings Affect Your Benefits

For taxable years ending after December 1972, if you earn $2,100 or less during the taxable year (usually January through December), nothing will be withheld from your benefits.

If you earn more than $2,100 in the year, for each $2 of earnings above $2,100, $1 will be withheld from your benefits.

However, regardless of total earnings in a year, benefits are payable for any month in which you neither earn wages of more than $175 nor perform substantial services in self-employment.

Benefits are also payable for all months in which you are 72 or older, regardless of the amount of your earnings in months after you reach 72.

2. Report Any Significant Change in Your Work and Earnings to Any Social Security Office

The amount of benefits payable to you for this taxable year has been determined on the basis of your work status at the time you made your annual report of earnings for last year and on the amount of earnings you expected for this year as shown on that report. You should report promptly to any social security office any change which will affect your payments, such as:

a. If you go to work while under age 72 and expect to earn over $2,100 in the year;

b. If you have previously reported that you expect to earn over $2,100 from work, but

(1) You stop work, or

(2) You do not earn over $175 for any month and you do not perform substantial services in self-employment, or

(3) You expect to earn substantially more or less than you previously indicated, for the year.

Prompt reports enable us to make adjustments to your benefit payments when you have income from work. Delayed reports make it necessary for us to withhold benefits during periods when you may not have income from work.

Any difference between the amount of benefits withheld based on your estimate of earnings and the amount that must be withheld on the basis of your actual earnings will be adjusted after the close of the year when you file your next annual report.

If you have any questions about reporting, you should get in touch with any social security office.

3. Information About Medical Insurance Premiums

a. When monthly social security benefits are being paid to you—

If your premiums are paid up-to-date, 1 month's premium will be withheld from your benefit check each month.

If you owe premiums for last year, the full amount owed will be withheld from your next check.

If you owe premiums only for this year, only 1 month's premium will be withheld from your next check and at the end of the year we will make an adjustment for other premiums owed.

Any excess premiums paid in advance will be refunded to you in a separate check.

b. When monthly social security benefits are not currently being paid to you—

If this is the first time your benefits are being withheld this year, you will be billed for any premiums you owe.

If your benefits were withheld earlier this year, we will not bill you now. At the end of the year, we will make an adjustment for any premiums due.

4. Information When You Have Been Overpaid

Under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:

a. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*

b. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason.

To decide whether repayment would cause you financial hardship, we will need a statement of your assets, and monthly income and expenses. If you think you meet both conditions or you wish to repay the overpayment by installments or have it withheld from benefits at a reduced rate over a longer period, call, write, or visit any social security office.

(12-72)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SOCIAL SECURITY ADMINISTRATION

PAYMENT CENTER

SAN FRANCISCO, CALIFORNIA 94105

BUREAU OF RETIREMENT AND SURVIVORS INSURANCE

REFER TO CLAIM NUMBER 533-10-5091-A

DATE March 8, 1972

John T. Vaeifar
2511 Wihi St.
Honolulu, HI 96819

THIS REFERS TO YOUR ANNUAL REPORT OF EARNINGS FOR 1971 AND YOUR WORK REPORT FOR 1972

WHAT YOU REPORTED

EARNINGS IN 1971	MONTHS IN 1971 IN WHICH YOU DID NOT EARN OVER $140 IN WAGES OR PERFORM SUBSTANTIAL SERVICES IN SELF-EMPLOYMENT	ESTIMATED EARNINGS FOR 1972	WORK STATUS AT TIME YOU MADE REPORT
$ 6593	JAN FEB MAR APR MAY JUN JUL AUG SEPT OCT NOV DEC X X X		WILL WORKING

THE STATUS OF YOUR CLAIM AS OF

	TOTAL BENEFITS WHICH SHOULD HAVE BEEN WITHHELD TO DATE	TOTAL BENEFITS ACTUALLY WITHHELD	AMOUNT NEEDED TO ADJUST YOUR CLAIM TO DATE	AMOUNT DUE YOU	REGULAR MONTHLY BENEFIT AMOUNT
1971	$ 453.90	$ 1363.80		$ 909.90	$ 151.60
1972	NONE				

A review of your report shows you are due $909.90 in benefits for 1971. A check for that amount will be sent to you shortly. You will continue to receive your regular payment amount each month.

If you have questions about your benefits, you may get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit an office, however, please take this notice with you.

Paul W. Quandt

Paul W. Quandt
Director of Operations
Retirement and Survivors Insurance

EXHIBIT F
1 of 2

See The Reverse Side Of This Form

FORM SSA-L766 (12-71)

101

If you believe this determination is not correct, you may request that your claim be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request.

1. How Your Work and Earnings Affect Your Benefits

For taxable years ending after December 1972, if you earn $2,100 or less during the taxable year (usually January through December), nothing will be withheld from your benefits.

If you earn more than $2,100 in the year, for each $2 of earnings above $2,100, $1 will be withheld from your benefits.

However, regardless of total earnings in a year, benefits are payable for any month in which you neither earn wages of more than $175 nor perform substantial services in self-employment.

Benefits are also payable for all months in which you are 72 or older, regardless of the amount of your earnings in months after you reach 72.

2. Report Any Significant Change in Your Work and Earnings to Any Social Security Office

The amount of benefits payable to you for this taxable year has been determined on the basis of your work status at the time you made your annual report of earnings for last year and on the amount of earnings you expected for this year as shown on that report. You should report promptly to any social security office any change which will affect your payments, such as:

a. If you go to work while under age 72 and expect to earn over $2,100 in the year;

b. If you have previously reported that you expect to earn over $2,100 from work, but

(1) You stop work, or

(2) You do not earn over $175 for any month and you do not perform substantial services in self-employment, or

(3) You expect to earn substantially more or less than you previously indicated, for the year.

Prompt reports enable us to make adjustments to your benefit payments when you have income from work. Delayed reports make it necessary for us to withhold benefits during periods when you may not have income from work.

Any difference between the amount of benefits withheld based on your estimate of earnings and the amount that must be withheld on the basis of your actual earnings will be adjusted after the close of the year when you file your next annual report.

If you have any questions about reporting, you should get in touch with any social security office.

3. Information About Medical Insurance Premiums

a. When monthly social security benefits are being paid to you—

If your premiums are paid up-to-date, 1 month's premium will be withheld from your benefit check each month.

If you owe premiums for last year, the full amount owed will be withheld from your next check.

If you owe premiums only for this year, only 1 month's premium will be withheld from your next check and at the end of the year we will make an adjustment for other premiums owed.

Any excess premiums paid in advance will be refunded to you in a separate check.

b. When monthly social security benefits are not currently being paid to you—

If this is the first time your benefits are being withheld this year, you will be billed for any premiums you owe.

If your benefits were withheld earlier this year, we will not bill you now. At the end of the year, we will make an adjustment for any premiums due.

4. Information When You Have Been Overpaid

Under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:

a. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*

b. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; *or* it would be unfair for some other reason.

To decide whether repayment would cause you financial hardship, we will need a statement of your assets, and monthly income and expenses. If you think you meet both conditions or you wish to repay the overpayment by installments or have it withheld from benefits at a reduced rate over a longer period, call, write, or visit any social security office.

(12-72)

SOCIAL SECURITY ADMINISTRATION

[redacted]

531-23-5394-A November 21, 1972

[redacted]
[redacted]
[redacted]
Honolulu, HI 96813

You will be pleased to know that your benefits are being started again for the month shown below.

1. AMOUNT OF YOUR NEXT CHECK	2. COVERED BENEFITS DUE THROUGH	3. WILL BE SENT ABOUT	4. AMOUNT OF REGULAR CHECK THEREAFTER
$ 115.80	November 1972	December 3, 1972	$ 115.80

We are withholding $80 from your benefits beginning November 1972 through September 1973 to recover your overpayment. This is in accordance with your request.

Please notify any social security office promptly of an event which might affect the payment of benefits. There is an explanation on the back of this letter of how work and earnings affect benefit payments.

If you have questions about your claim, you may get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit an office, however, please take this letter with you.

Sincerely yours,

Paul W. Quandt

Paul W. Quandt
Director of Operations

SEE THE REVERSE SIDE OF THIS LETTER

SSA-L761 (4-71)

EXHIBIT C
1 of 2

If you believe this determination is not correct, you may request that your claim be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request.

1. **How Your Work and Earnings Affect Your Benefits**

   For taxable years ending after December 1972, if you earn $2,100 or less during the taxable year (usually January through December), nothing will be withheld from your benefits.

   If you earn more than $2,100 in the year, for each $2 of earnings above $2,100, $1 will be withheld from your benefits.

   However, regardless of total earnings in a year, benefits are payable for any month in which you neither earn wages of more than $175 nor perform substantial services in self-employment.

   Benefits are also payable for all months in which you are 72 or older, regardless of the amount of your earnings in months after you reach 72.

2. **Report Any Significant Change in Your Work and Earnings to Any Social Security Office**

   The amount of benefits payable to you for this taxable year has been determined on the basis of your work status at the time you made your annual report of earnings for last year and on the amount of earnings you expected for this year as shown on that report. You should report promptly to any social security office any change which will affect your payments, such as:

   a. If you go to work while under age 72 and expect to earn over $2,100 in the year;

   b. If you have previously reported that you expect to earn over $2,100 from work, but

      (1) You stop work, or

      (2) You do not earn over $175 for any month and you do not perform substantial services in self-employment, or

      (3) You expect to earn substantially more or less than you previously indicated for the year.

   Prompt reports enable us to make adjustments to your benefit payments when you have income from work. Delayed reports make it necessary for us to withhold benefits during periods when you may not have income from work.

   Any difference between the amount of benefits withheld based on your estimate of earnings and the amount that must be withheld on the basis of your actual earnings will be adjusted after the close of the year when you file your next annual report.

   If you have any questions about reporting, you should get in touch with any social security office.

3. **Information About Medical Insurance Premiums**

   a. When monthly social security benefits are being paid to you—

      If your premiums are paid up-to-date, 1 month's premium will be withheld from your benefit check each month.

      If you owe premiums for last year, the full amount owed will be withheld from your next check.

      If you owe premiums only for this year, only 1 month's premium will be withheld from your next check and at the end of the year we will make an adjustment for other premiums owed.

      Any excess premiums paid in advance will be refunded to you in a separate check.

   b. When monthly social security benefits are not currently being paid to you—

      If this is the first time your benefits are being withheld this year, you will be billed for any premiums you owe.

      If your benefits were withheld earlier this year, we will not bill you now. At the end of the year, we will make an adjustment for any premiums due.

4. **Information When You Have Been Overpaid**

   Under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:

   a. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*

   b. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason.

   To decide whether repayment would cause you financial hardship, we will need a statement of your assets, and monthly income and expenses. If you think you meet both conditions or you wish to repay the overpayment by installments or have it withheld from benefits at a reduced rate over a longer period, call, write, or visit any social security office.

(12-72)

EXHIBIT I

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

535-15-5-494-A

February 2, 1973

Mr. John V. Vaquilar
Apartment G
1421 Alapai
Honolulu, Hawaii 96813

Dear Mr. Vaquilar:

This refers to your overpayment of $309.90 for January 1971 through September 1971 because of your work and earnings in 1971.

Under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:

1. The overpayment was not your fault in any way and you cashed the checks because you thought they were correct, *and*
2. You could not meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or is would be unfair for some other reason.

We have carefully considered all evidence of record and the information which you submitted regarding your reasons for accepting the incorrect payment. We find that you may not be relieved of the responsibility for repayment of the overpaid amount. You were fully advised of the deduction provisions when you filed for benefits November 1, 1966. You filed timely annual reports for such succeeding years. Moreover, on January 23, 1972, you submitted an erroneous annual report, indicating you did work January 1971 through September 1971. The annual report was processed and a check for $909.90

was released to you. The notice you received indicated the amount of $909.90 was due you based on your work report for 1971. Since you knew your non-work months in 1971 were only October 1971 through December 1971, and you had already been paid for those months, you should have questioned the excessive amount being paid as additional benefits for 1971. (No mention was made of prior years.) You had contacted the district office on previous occasions relative to benefits being paid to you.

In view of the foregoing, it [4 lines illegible]

If you believe that this determination is not correct, you may request that your case be reexamined. If you want this reexamination, you must request it not later than 6 months from the date of this notice. You may make any such request through any social security office. If additional evidence is available, you should submit it with your request.

It has been determined that the partial withholding of $40 per month will be used until the full recovery is made.

It has been determined that the partial withholding of $40 per month will be used until the full recovery is made.

Sincerely yours,

PAUL W. QUANDT
Director of Operations

cc:
Giles:rjd
Reading File
RSI:RR:SF:OCR:VV

EXHIBIT D

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
Baltimore, Maryland 21241

BUREAU OF DISABILITY INSURANCE

January 8, 1973

Refer to: 576-38-2979 HB2

Nancy T. Yamasaki
1351 Aala St Apt 201
Honolulu HI 96817

Your next social security check for $19.80 will be sent to you shortly after November 3, 1973. This check represents benefits due through October 1973. After that, your check for $20.70 will be sent to you regularly each month.

As you have been previously advised, we are withholding your benefits of $20.00 for December 1972 through September 1973 and part of October 1973 to recover the $207.90 overpayment made to you for February 1972 through August 1972. Effective October 1973 you will receive $19.80 and $20.70 effective November 1973 on.

Please notify your social security office promptly of any event which might affect your benefits.

If you have questions about your claim, you should get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit the office, however, please take this letter with you.

Sincerely yours,

/s/ C. C. Hall
C. C. HALL
Assistant Director

1258/1-4-73/#2/

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF UMEYUKI TANIGUCHI

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

UMEYUKI TANIGUCHI, being first duly sworn on oath, deposes and says that:

1. I am married and reside at 45-1040 D Wailele Rd., Kaneohe, Hawaii.

2. In 1965, I received severe neck and back injuries (including a ruptured disk) in an industrial accident necessitating five separate operations to treat my injury.

3. Because of the severity of my condition, I began receiving Social Security disability benefits almost immediately.

4. In November 1972, I received a letter of notification that my next check (December) and all subsequent checks would have certain deductions in order to allow the Social Security Administration recoup the amount of benefits paid to me for a 1½ year period. I phoned the Honolulu branch office and was told that they wanted to recoup money paid to me during a period when I received some workmen's compensation benefits.

5. One week later, I visited the Honolulu branch of the Social Security office in an attempt to discover why I was forced to repay that money.

6. The first official of the Social Security Administration to whom I spoke refused to answer my many questions and finally threw the letter at me. I felt that I deserved answers to my questions and, then, spoke to a supervisor about my case and my treatment to date by the Social Security officials.

7. The supervisor gave me financial forms to complete and submit by December 7, 1972, to this office.

8. At no time have I felt that I owed the Social Security Administration any of this money.

9. I saw a notice in the newspaper advising me that the Legal Aid Society might be able to assist me with the Social Security Administration problem.

10. I spoke to Mr. Stanley E. Levin who advised me about other persons in situations similar to mine and I requested that his office help me.

11. I submitted necessary financial forms to the Honolulu branch on or about December 7, 1972 and furthermore I agreed to allow them to deduct $50 per month from my monthly check.

12. I was afraid that I would lose all of my social security benefits unless I agreed to repay the money.

13. If the Social Security officials had provided me with an opportunity for a hearing prior to their deciding I owed money, I would have used a hearing to prove that I did not owe any money.

14. I believe that only by such a procedure can a recipient's rights to subsistence funds be protected.

15. For the foregoing reasons, in response to a newspaper ad, I contacted the Legal Aid Society of Hawaii and have requested representation in this matter. I be-

lieve my situation is identical to other persons being represented by the Legal Aid Society.

Further affiant sayeth not.

/s/ Umeyuki Taniguchi
UMEYUKI TANIGUCHI

Subscribed and sworn to before me
this 9th day of January, 1973.

/s/ Georgianna G. Padayhag
GEORGIANNA G. PADAYHAG
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 12-2-74.

EXHIBIT I

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Jan. 30, 1973]

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF HIROKO SHIMABUKURO

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

HIROKO SHIMABUKURO, being first duly sworn on oath, deposes and says that:

1. I am married to Mr. Roy R. Shimabukuro and the mother of five children, and reside at 1246 Ala Napunani Street, Honolulu, Hawaii.

2. My husband was stricken with an eye disease in 1962 and as a result of the disease, he became permanently blind.

3. Because of my husband's disability, our family began receiving Social Security payments of approximately $300 per month; this figure changing due to the number of my children who remained at home. Originally, I received payments for all five of my minor children.

4. For quite some time I was completing the Annual Report forms as required by the Social Security Administration, but during the summer of 1972 the officials at the Honolulu branch told me that I would not be required to submit those forms any more because only

one of my children was unemancipated and living at home.

5. During the first week of December, 1972, I received a letter of notification from the Honolulu branch of the Social Security Administration stating that I owed them the sums of $709.00 and $800.00 for the years 1971 and 1972 respectively. (See Exhibits A & B attached hereto).

6. Enclosed with this notice were other forms for me to complete.

7. I contacted the Honolulu branch of the Social Security Administration to find out what was meant by this letter and I was told that the Social Security Administration had decided that I had been overpaid for those years. I was told that the overpayment was related to some of my children reaching the age of majority.

8. Due to my husband's total disability, I was forced to seek employment to augment our meager family income from the social security payments.

9. I have been employed by Shopping Basket, Inc. for the past ten years, and I began at a net salary of approximately $250 per month.

10. I do not believe that I owed the Social Security Administration the sums demanded as I was totally unaware of any overpayment during the months in question.

11. I believe that the Social Security Administration should not decide persons owe money or demand payment unless that person has had a prior opportunity to discuss the problem with those officials.

12. I would have used such a hearing to present my side and discuss my case, but no such opportunity was provided.

13. For the foregoing reasons, in response to a newspaper ad, I contacted the Legal Aid Society of Hawaii and have requested representation in this matter. I believe my situation is identical to other persons being represented by the Legal Aid Society.

Further affiant sayeth not.

/s/ Hiroko Shimabukuro
HIROKO SHIMABUKURO

Subscribed and sworn to before me
this 29th day of January, 1973.

/s/ Georgianna G. Padayhag
GEORGIANNA G. PADAYHAG
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 12-2-74.

EXHIBIT "A"

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE
SOCIAL SECURITY ADMINISTRATION
Baltimore, Maryland 21241

December 4, 1972

BUREAU OF DISABILITY INSURANCE

Refer to Claim Number:

576-01-8064 HB2

Hiroko Shimabukuro
1246 Ala Napunani St
Honolulu HI 96818

A review of your report of earnings for last year shows we should have withheld more social security benefits.

1. Reported earnings for last year—$6,341.24.
2. Total benefits withheld—$0.00.
3. Amount which should have been withheld—$709.10.
4. Amount you owe—$709.10.

You should send us the amount shown in item 4 by check or money order made out to the Social Security Administration. Please show your claim number as indicated above on the check or money order and mail it in the enclosed envelope.

Please see items 1 and 2 on the back of this letter for an explanation of how work and earnings affect benefit payments. Also, see item 3 on the back for overpayment information.

If you have questions about your claim, you may get in touch with any social security office. Most questions can

be handled by telephone or mail. If you visit an office, however, please take this letter wih you.

Sincerely yours,

/s/ C. C. Hall
C. C. HALL
Assistant Director

Enclosure
Envelope

EXHIBIT "B"

Due to the termination of benefits payable to Mike in May 1971, the provisions of the Social Security Act under which you were receiving your full monthly benefit while working and earning over $140.00 each month no longer apply. You are entitled to receive a partial [payment] of $25.40 for May 1971.

Due to the termination of benefits payable to Norene effective June 1971, you are no longer entitled to receive any benefits for any month you earn over $140.00. Since you received $93.40 for June 1971 through August 1972 and $112.10 for September 1972, you have been overpaid $709.10 for 1971 and incorrectly paid $859.30 for January 1972 through September 1972.

Final adjustment for 1972 will be made when we receive your 1972 annual report.

EXHIBIT J

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Jan. 11, 1973]

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT OF LORRAINE ROBINSON

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

LORRAINE ROBINSON, being first duly sworn on oath, deposes and says that:

1. I am married to Alexander P. Robinson, and we reside at 91-823 Liuliu Place, Ewa Beach, Hawaii.
2. I have been married previously and that husband passed away several years ago.
3. My daughter, 14 years of age, was born of that previous marriage.
4. Our family has been receiving benefits from the Social Security Administration for the total disability of my husband and for the survivors benefits payable to myself and my daughter.
5. My husband suffers from a severe condition of fibrosis of the lungs, in addition to severe heart complications, and is therefore totally disabled.
6. Initially, he applied for disability benefits in May 1970, and he began receiving payments in August 1971. At that time he received a check covering the period of his eligibility determinations.

7. In November 1972, my husband's regular monthly disability check of approximately $165 was unilaterally reduced to the amount of $33. Our family never received any prior written notification from the Social Security Administration of pendency of such action.

8. Immediately I phoned the Waipahu Branch of the Social Security Administration and demanded an explanation of this reduction. At that time, I was told that my husband's check was being reduced because they had knowledge that he would be receiving simultaneous workmen's compensation benefits. I was also told by these officials that my husband received the amount of $33 only because that amount represented the recent 20% increase in benefits. They stated that they did not believe they could recoup against that amount at this time.

9. On or about November 14, 1972, our family received a written notice that the Social Security Administration would reduce my husband's disability check even further in order to recoup another alleged overpayment ($600) and that this second recoupment would begin in March, 1973.

10. Subsequently, in November, 1972, my small check was reduced, without any prior notification to me. Upon phoning the Waipahu Branch for a second time, I was told that my reduction was due to alleged overpayments to my husband through his disability checks.

11. Neither I nor my husband was provided with any prior opportunity to contest the correctness of these decisions of the Social Security Administration.

12. I believe that if we had been afforded such an opportunity we would be receiving our regular benefits, not a drastically reduced version.

13. For the foregoing reasons, in response to a newspaper ad, I contacted the Legal Aid Society of Hawaii and have requested representation on this matter. I believe my siuation is identical to other persons being represented by the Legal Aid Society.

Further affiant sayeth not.

/s/ Lorrain E. Robinson
LORRAINE E. ROBINSON

Subscribed and sworn to before me
this 11th day of January, 1973.

/s/ Karen S. Jones
KAREN S. JONES
Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 9-7-74.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Apr. 3, 1973]

EVELYN ELLIOTT and BENITO MOLINA, Individually and on behalf of all other similarly situated, PLAINTIFFS

vs.

ELLIOT L. RICHARDSON, Individually and in his capacity as Secretary, United States Department of Health, Education and Welfare; and SUNG DAI SEU, Individually and in his capacity as Pacific Area Manager, Social Security Administration, Department of Health, Education and Welfare, DEFENDENTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action came on for hearing on February 20, 1973, upon Defendants' Motion for Extension of Time to Answer Plaintiffs' Interrogatories and Plaintiffs' Motion for Temporary Restraining Order or Alternatively for a Preliminary Injunction; the Plaintiffs represented by counsel, Peter A. Lee and Stanley E. Levin, Legal Aid Society of Hawaii; the Defendants represented by Robert Fukuda, U.S. Attorney for the District of Hawaii; evidence, both oral and documentary, was received, and arguments were heard. Whereupon this court, being fully advised in this matter, enters the following

FINDINGS OF FACT

1. On August 17, 1972, Evelyn Elliott and Benito Molina filed the above-entitled action for declaratory and injunctive relief against the named defendants.

2. This action sought a declaration that Title II Social Security Act, Section 204(a)(b), 42 U.S.C. § 404(a)(b), violates the Due Process Clause of the Fifth Amendment to the United States Constitution and permanent injunctive relief against said defendants.

3. The gravamen of the complaint was that the Social Security Administration does not provide a constitutionally adequate notice or hearing prior to the "adjustment," (i.e. reduction or termination) of a recipient's benefits.

4. Plaintiffs Elliott and Molina sought relief for themselves and all other persons similarly situated within the State of Hawaii.

5. Evelyn Elliott is a 64 year old cancer patient residing in Honolulu, Hawaii and receiving Social Security benefits.

6. Mrs. Elliott received full benefits of $156.00 per month until May, 1972, when she was informed by a hand-delivered letter from an official of the Social Security Administration, Honolulu District Office, that her benefits would be totally suspended from June to November 1972. No reasons were stated in the letter for said suspension other than a general statement that an overpayment had occurred. The letter failed to explain to Mrs. Elliott the forms and procedures available to her to assert her rights to reconsideration and waiver under the Social Security Administration regulations.

7. Because her Social Security benefits were her sole source of income, on June 27, 1972, Mrs. Elliott wrote to the Honolulu District Office explaining her financial difficulties, requesting an explanation for the suspension, and agreeing to receive a reduced monthly check of $50.00 in lieu of a full suspension of benefits.

8. Mrs. Elliott received no June, July, or August checks and was forced to obtain emergency welfare assistance from the State of Hawaii.

9. On August 3, 1972, Mrs. Elliott filed the requisite forms [1] with the Honolulu District Office.

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[1] Attached as Exhibits B, C, D, & E to the Verified Complaint filed herein.

10. During the week of August 7, 1972, Mrs. Elliott received a check of $442.00 from the Social Security Administration. This amount represented her June, July, August payments, less $50.00 per month withheld.

11. Mr. Benito Molina has lived and worked in Hawaii since 1921 when he emigrated from the Philippine Islands. In 1953, he became a United States citizen.

12. From 1962 until June, 1972, Mr. Molina has received social security old age benefits (OASDI). His benefits were terminated in June 1972 without any prior notice or opportunity for a pre-termination hearing.

13. In late May 1972, Mr. Molina responded to questions raised by officials at the Waipahu Branch Office concerning the possibility of conflicting claims to future survivors benefits.

14. Mr. Molina received no checks for June, July, and August. His main source of income is his monthly social security check of approximately $163.00.

15. Because his benefits were terminated, Mr. Molina was forced to obtain temporary welfare assistance of approximately $75.00 per month.

16. Shortly after the filing of this section, the Social Security Administration agreed to restore benefits to Mrs. Elliott and Mr. Molina at their pre-adjustment levels and to continue to pay them benefits pending final determination of the constitutional claims raised by their Verified Complaint.

17. On October 17, 1972, this Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, ordered this action be maintained as a class action; on November 20, 1972, this Court ordered notification to members of the class of the pendency of this action.[2]

18. Between January 9, 1973 and January 30, 1973, affidavits were filed on behalf of Carl Yamasaki, Nancy Yamasaki, Raymond Gaines, Lorraine Robinson, Isabelle Ortiz, Umeyuki Taniguchi, John V. Vaquilar, Jordan Silva and Hiroko Shimabukuro by attorneys for the Plaintiffs.

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[2] During the interim, at a hearing on October 26, 1972, both the Plaintiffs' Motion for Preliminary Injunction and Defendants' Motion for an Extension of Time to Answer were orally denied.

19. These affidavits, authenticated and entered into evidence as Plaintiffs' Exhibits *P-1/P-15* at the hearing herein establish that:

(a) While most of the Affiants received a written notice of downward adjustment (Yamasakis, Shimabukuro, Ortiz, Vaquilar, Silva, Taniguchi), others did not receive any prior notification, initially being made aware of an adjustment in benefits upon receipt of a reduced check. (i.e. affidavits of Mr. Gaines, Mrs. Robinson)

(b) Every Affiant who received written notice contacted the Social Security Administration within 30 days of receipt of the letter.

(c) Every Affiant, except Mrs. Shimabukuro, relied on the social security benefits as the primary means of support and consequently a downward adjustment of these benefits forced several of them to seek temporary welfare assistance. (For Mrs. Shimabukuro, the benefits constituted approximately 40% of her annual income.)

(d) Every Affiant had worked in the State of Hawaii for a substantial period to build up social security entitlements.

(e) At the time of the hearing on this matter, partial or total adjustments had been completed against Affiants Vaquilar ($909.90), Ortiz ($492.80); adjustments were in effect against Affiants Taniguchi ($50 per month initiated December, 1972 to repay approximately $700.00), Robinson ($132 per month initiated November, 1972, to recoup approximately $600); Gaines (termination of $125.00 monthly benefits to recoup approximately $900), and Yamasakis (termination of $20.70 statutory-disability share from January 1973 to October 1973 to recoup $207.90); Affiant Silva ($1374 overpayment claimed presently being recouped at a rate of $10.00); and an adjustment pending against Affiant Shimabukuro ($1568.40 claimed; exact date for recoupment not as yet established).

(f) Every Affiant who was informed of his rights of reconsideration and waiver, (i.e. Mrs. Shimabukuro, Mr. Yamasaki, Mr. Taniguchi) submitted the requisite forms to the Social Security Administration.

(g) Every Affiant who was never informed (by written or oral communication) of his rights to reconsideration and waiver, (i.e. Mrs. Ortiz, Mr. Vanquilar, Mrs. Robinson, Mr. Gaines) did not timely submit the requisite forms to the social security administration, but upon being informed, immediately filed said forms.

(h) Every Affiant believed that he or she did not owe the amount claimed by the Social Security Administration.

(i) In every case, the determination to adjust downward on Affiants' benefits involved questions of law and fact.[3]

(j) Each and every Affiant believed he or she was "without fault" in causing the alleged overpayments and that he or she could not afford to repay the amount claimed by the Social Security Administration.[4]

(k) None of the affiants was provided with any pre-adjustment oral hearing regarding determination of the correctness of the Social Security Administration's decision or the appropriateness of waiver being made.

(l) In the case of each and every Affiant, the Social Security Administration, during the period of disposition of the requests for waiver and reconsideration did not continue to pay a recipient his pre-adjustment benefits.

(m) Each and every Affiant would have utilized a pre-adjustment hearing if it had been made available to him.

20. Oral testimony of the Social Security officials at the hearing on February 20, 1973, and at earlier hearings, established that their procedure under the applicable regulations was that:

(a) A recipient, after being notified of a prospective downward adjustment, must contact the local Social Security office within 30 days to contest the correctness of the decision to adjust and the appropriateness of waiver of said adjustment;

(b) Once contacted, the Social Security personnel should answer any questions the recipient may have regarding the adjustment and if applicable will contest the correctness of the determination and/or seek waiver of the adjustment;

(c) The local social security office collects the Waiver (SSA632), without fault (HSA-631) and Reconsideration (SSA561) forms, and forwards these forms to the appropriate reviewing offices, i.e., Payment Centers throughout the United States;

(d) The district and branch offices transmit these forms for a determination by the Payment Center regarding the correctness of the substantive decision and the appropriateness of waiver in a given case;

(e) The district and branch offices do not possess the ultimate power for any decision making regarding a recipient's case, and consequently, these offices must await disposition by the reviewing office wherever situated (e.g. San Francisco, Kansas City, Baltimore.);

(f) The time period between submission of the waiver form and a decision regarding waiver is, as a practical matter delayed a minimum of 1 pay period and often as long as three payment periods;

(g) During the period of disposition of these requests, the Social Security Administration does not

[3] E.g. in Mrs. Shimabukuro's case, the Social Security Administration was seeking to recover alleged overpayments of approximately $1500 for the years 1971 and 1972 because, during that period, some of her children had reached the age of majority for benefit determination purposes.

[4] E.g. the Yamasakis were notified that due to a processing error of the Social Security Administration, an overpayment of $207.90 had occurred. Notwithstanding the Social Security Administration's admission that a processing error had occurred, Mrs. Yamasaki was requested to demonstrate that the overpayment was not her fault.

continue to pay a recipient his pre-adjustment benefits; the adjustment will be effectuated until a decision by the reviewing office reverses the initial and earlier determination to adjust;

(h) Provisions for "expedited" waiver decisions by the reviewing office are available but this procedure, as a practical matter, still results in an adjustment being made prior to review; in expedited cases adjustments will still go forward until reversed by the reviewing office.

CONCLUSIONS OF LAW

1. Pursuant to 28 U.S.C. § 1331, 1361, 1391 and Rule 65 of the Federal Rules of Civil Procedure, this court has jurisdiction to adjudicate Plaintiffs' constitutional claims and grant such other relief it deems necessary. Social Security benefits are statutory entitlements which are contributed by the recipient during his working years. Deductions are made at each pay period and constitute an individual's "insurance" for purposes of his or her future eligibility for social security payments of any type. *See* 42 U.S.C. § 402(a)(c).

2. Section 204(a), Title II Social Security Act, 42 U.S.C. § 404(a) provides that:

> Whenever an error has been made with respect to an individual under this title, proper adjustments shall be made, under regulations prescribed by the Secretary, by increasing or decreasing subsequent payments to which such individual is entitled.

3. Section 204(b), Title II Social Security Act, 42 U.S.C. § 404(b), provides that:

> There shall be no adjustment or recovery by the United States where incorrect payment has been made to an individual who is without fault, and when adjustment or recovery would defeat the purpose of this title or would be against equity and good conscience.

4. To implement these statutory mandates regarding the adjustment of benefits, the Social Security Administration has promulgated in its Claims Manual, the following provisions:

> Sec. 5503. *Summary of Procedures for Dealing With Overpayments*
>
> (a) Written Notice
>
> When it is determined that an incorrect payment has been made, the person liable should be notified in writing. The notice will inform the person of:
>
> (1) The incorrect payment made, how, and when it occurred.
>
> (2) The right to request reconsideration of the overpayment determination.
>
> (3) The required recovery.
>
> (4) The proposed adjustment or the demand for repayment where adjustment is not possible.
>
> (5) The waiver provisions of the law.
>
> (6) The availability of partial adjustment or partial refund.
>
> (7) The need to notify the DO promptly if he feels that the circumstances in his case would justify waiver, partial adjustment, or partial refund.
>
> • • • •
>
> (b) Delay in Withholding Benefits to Recover Overpayment
>
> Before we start to adjust the overpayment against the benefits due a beneficiary, he or his payee will normally be given reasonable opportunity to contest the correctness of the determination or to establish that a basis exists for waiver or partial adjustment. The notice to the beneficiary will advise him that adjustment will be deferred 30 days. However, actual adjustment may at the discretion of the reviewing office be extended to a longer period when the facts in a given case, including but not limited to time case is being worked, cut-off dates, mailing time, etc., indicate that a 30-day period would be inadequate for consideration of the matter and reply

by the beneficiary and reviewing office processing time.

The only exceptions to this rule are:

(1) the overpayment is based on a timely annual report by the beneficiary; or

(2) the overpayment results from the superendorsement procedures under Section 205(n) of the Act whereby payment of a combined check is made to the survivor. Under such circumstances, the surviving beneficiary is given advance notice of the adjustment action that will be taken to recoup the amount of the check which exceeds the amount to which the surviving individual is entitled in his own right. In the above two situations an immediate adjustment action is taken.

(c) Person Liable Protest

If the person responds raising some question about the correctness of the determination of overpayment, or raises a question about recovery, waiver or partial adjustment, the DO will obtain the necessary evidence and prepare a recommendation to the reviewing office for disposing of the case. Thus, if the person liable requests reconsideration of the substantive determination and it appears that the determination will be affirmed, the DO will develop the possibility of waiver of adjustment or recovery of the overpayment at the same time it receives evidence to resolve the request for reconsideration. This is necessary since, after the substantive determination is affirmed, the Reconsideration Determination will cover both issues (Sec. 8737).

Where reconsideration of the overpayment determination, waiver, or partial adjustment development is initiated, withholding to recoup the overpayment will be further deferred and payment will be continued until development has been completed, if the beneficiary is otherwise entitled to benefits. If development will not be completed before the expiration of the 30 day period, the DO will utilize teletype to advise the reviewing office.

Where action has already been taken to recoup an overpayment, i.e., § (b)(1) or (b)(2) above, or where the beneficiary did not respond until after the deferral period, if the beneficiary requests either waiver, partial adjustment or reconsideration of the overpayment determination and benefits are otherwise payable, the DO will immediately notify the reviewing office to initiate payment of benefits effective with the current operating month until such time as the issue has been resolved.

5. "The fundamental requisite of due process of law is the opportunity to be heard", *Grannis* v. *Ordean*, 234 U.S. 385, 394 (1914), "at a meaningful time and in a meaningful manner," *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). The circumstances in which due process clause requires an opportunity to be heard prior to detrimental government action "begin[s] with a determination of the precise nature of the government function involved as well as the private interest that has been affected by government action." *Cafeteria & Restaurant Workers Union* v. *McElroy*, 367 U.S. 886, 895 (1961).

6. By its decision in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), the United States Supreme Court established that, in order to effectively protect welfare recipients' constitutional due process rights, state welfare agencies were required, as a constitutional minimum, to provide a recipient with *adequate advance notice* of a proposed termination of benefits and with an opportunity for a hearing *prior* to effectuating any termination. The function of that hearing would be "to produce an initial determinate of the validity of the . . . department's grounds for discontinuance of payments in order to protect a recipient against an erroneous termination of benefits." 397 U.S. at 267. The Court held that the "brutal need" of the recipient's situation, i.e., depending on these benefits for daily subsistence, demanded this result.[1] Accord:

[1] Additionally, courts have mandated prior oral adversary hearings in the following situations: *Perry* v. *Sindermann*, 408 U.S. 593 (1972); [tenured teacher entitled to hearing prior to nonretention]; *Bell* v. *Burson*, 402 U.S. 535 (1971) [driver entitled to hearing prior

Wheeler v. *State of Vermont*, 335 F. Supp. 856 (D. Vt. 1972).

7. The facts of this case establish that the written letter sent by the Social Security Administration (*see* §§ 5508 Claims Manual for sample letters of adjustment) to the recipients does not provide them with constitutionally adequate notice. At best, if the notice is sent, it warns the recipients *generally*, that a downward adjustment *has been made*. The notice, as provided in § 5503 Claims Manual, does not provide sufficient information for the recipient to make an informed decision on how he can best proceed; and, by failing to provide complete information, tends to discourage further inquiry by the recipient. Moreover, the present notice fails to communicate to the recipient his right to come forward and complain about the pending adjustment, and the method he may utilize to enforce this right.

8. Due process requires at a minimum the Social Security recipient, like the welfare recipient, who depend on benefits for subsistence be informed in writing of:

> (a) the reasons for termination;
> (b) his right to request a pre-termination hearing;
> (c) the continuance of benefits until the prior hearing is held, and thereafter until notice of adjustment is mailed to recipient;
> (d) the method whereby a recipient may obtain a pre-termination hearing;
> (e) his right to a fair hearing;
> (f) his right to be represented by legal counsel both at the pre-termination and fair hearings;
> (g) his right to confront and cross-examine witnesses against him. *See Bell* v. *Burson*, 402 U.S. 535 (1971); *Goldberg* v. *Kelly*, *supra*; *Cafeteria & Restaurant Workers Union* v. *McElroy*, *supra*; *Green* v. *Elroy*, 360 U.S. 474, 496-97 (1959).

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to license revocational]; *Sniadach* v. *Family Finance*, 395 U.S. 337 (1967) [hearing prior to garnishment of wages]; *Cafeteria Workers* v. *McElroy*, *supra* [hearing prior to loss of public employment].

9. Additionally, due process requires that the social security recipients for whom benefits are the primary means of support are entitled to the same constitutional protection as the welfare recipient in *Goldberg*. The social security recipient who relies on his benefits as the primary means of support must be afforded the opportunity for a hearing prior to any adjustment of his benefits by the Social Security Administration. Under the existing regulations, § 5503(b)(c) Claims Manual, the recipient is not afforded the opportunity for even a minimal oral adversary hearing to test either the factual and legal correctness of the Social Security Administration determination or the question of his "brutal need", i.e. whether recoupment should be waived immediately. At present the recipient is caught in the administrative shift of decision-making from the local district office to the regional payment centers and consequently as a practical matter he receives no check for a substantial period (at least 2 or 3 pay periods).

10. The applicable regulations fail to provide the recipient with the type and quality of due process hearing mandated by *Goldberg* v. *Kelly*, *supra*. Under the Social Security Claims Manual, Section 5503(b)(c), the constitutional infirmities stem from the *ex parte* character, in theory and practice, of any and all determinations regarding the correctness of the substantive determination, and the feasibility of waiver.

The regulations provide:

> (b) *Delay in Withholding Benefits to Recover Overment*
>
> . . . The notice to the beneficiary will advise him that adjustment will be deferred 30 days. *However, actual adjustment may at the discretion of the reviewing office be extended to a longer period . . .*
>
> (c) *Person Liable Protests*
>
> If the person responds raising some questions about the correctness of the determination of

overpayment or raises a question about recovery . . . . *the (District Office) will obtain the necessary evidence and prepare a recommendation to the reviewing office for disposing of the case. Thus, a person liable requests reconsideration of the substantive determination and it appears that the determination will be affirmed, the (District office) will develop the possibility of waiver of adjustment . . . at the same time it receives evidence to resolve the request for reconsideration. This is necessary since if the substantive determination is affirmed the Reconsideration Determination will cover both issues.* (emphasis in original)

11. These regulations never provide a recipient with even a minimal due process hearing prior to an adjustment of his benefits.[2] Nowhere do the above-quoted Social Security regulations provide for the notification to the recipients of the kind of evidence which must be brought forward to contest a social security initial determination; the standard of proof to be applied; or the availability of an impartial decision-maker.

At best, the process established by the Social Security Administration approximates the procedures for written submission specifically rejected as a constitutionally adequate in *Goldberg*. As the Court held:

> Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decision-maker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision . . . . Therefore, a recipient must be allowed to state his *position orally* . . . .
>
> *In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.* 397 U.S. at 269 (citations omitted) (emphasis added)

[2] Due to the broad exception of Claims Manual §§ 5503(a) and (b)(1) and (2), recipients filing annual income reports and recipients who receive a combined survivors' benefit check are subject to ***immediate adjustment without deferral. These recipients are denied any semblance of due process protection.*** (Plaintiffs Shimabukuro, Silva, Vaquilar fall within the ambits of these broad exceptions.)

12. Additionally, while the social security regulations may suggest a procedure by which adjustments are deferred once the recipient challenges the correctness of the decision to adjust, the facts of this case indicate otherwise. The repeated and recurrent instances of aggrieved recipients establishes that these regulations allow for wide variances in enforcement and interpretation and are, therefore, constitutionally inadequate. It is a relatively simple matter for the social security administration to promulgate regulations which would not be subject to such uneven interpretation by its own employees.

13. It is clear, therefore, that minimal due process demands that the Social Security Administration provide a recipient with a convenient hearing prior to any downward adjustment of benefits at which the recipient may:

(a) confront and cross-examine any adverse witness;
(b) submit any evidence to establish all pertinent facts and circumstances in the case;
(c) question or refute any testimony or evidence;
(d) examine all documents and records to be used at the hearing at a reasonable time before the date of hearing, as well as during the hearing;
(e) present the case itself or have it presented by legal counsel or other person;
(f) present witnesses in his own behalf;
(g) be heard by an impartial decision-maker.

14. Moreover, it is also clear that the foregoing minimum due process safeguards must be afforded to all re-

cipients of Title II Social Security benefits who are also for constitutional purposes substantially aggrived (e.g. Mrs. Shimabukuro) not merely those recipients in "brutal need." *See Bell v. Burson, supra.*

15. This court therefore concludes that:

(a) Immediate and irreparable injury, loss, and damage have resulted and will result to Plaintiffs and their class before this matter can be decided on its merits;

(b) Defendants will not suffer undue injury as a result of this Order;

(c) Plaintiffs have raised serious and substantial statutory and constitutional questions on the validity of the procedure used by Defendants to adjust payments of OASDI benefits under Title II of the Social Security Act;

(d) There is a substantial likelihood that Plaintiffs and their class will prevail on the merits. *Schwartz* v. *Covington*, 341 F.2d 537 (9th Cir. 1965).

Order Accordingly.

Dated: Honolulu, Hawaii, April 3, 1973.

/s/ Samuel P. King
SAMUEL P. KING
Judge
United States District Court
of Hawaii

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3629

[Filed Apr. 10, 1973]

EVELYN ELLIOTT, ET AL., PLAINTIFFS

vs.

CASPAR WEINBERGER, ET AL., DEFENDANTS

DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the within was duly mailed to Stanley Levin & Peter Lee, attorney at his last known address on April 10, 1973.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 72-3629

EVELYN ELLIOTT, ET AL., PLAINTIFFS

v.

CASPAR WEINBERGER, ET AL., DEFENDANTS

DEFENDANTS' ANSWERS TO PLAINTIFFS' INTERROGATORIES

PRELIMINARY STATEMENT

A. The answers to the plaintiff's interrogatories are herewith furnished in good faith and based upon the best information available to the Social Security Administration.

Defendant has endeavored to be as responsive as possible in submitting answers to plaintiffs' interrogatories. Certain information requested herein is of a confidential nature and is precluded by law from disclosure. Where this obtains, the legal basis therefor is indicated. Statistics are also requested in certain questions which have not been compiled by the Social Security Administration and are thus not available. Such information can only be obtained by a statistical study which could only be undertaken over a long period of time and at great expense and utilization of much personnel resources. Such costs are not expended unless the information obtained would be of significant value of Title II program objectives. Where statistics relevant to the information sought are available they have been furnished in answer to the interrogatory.

B. For purposes of answering these interrogatories, the term "old-age" benefits is defined as meaning retirement and survivors insurance benefits under Title II of the Act. This definition is necessary since statistics requested

by plaintiff are maintained by beneficiary categories, and there is a beneficiary category (child's benefits) common to both retirement and survivor's benefits.

Plaintiff's Preliminary Statement

In these interrogatories, the term "new procedures" is used to refer to the procedures for recouping overpayments described in 20 C.F.R. §§ 404.502(a), 404.907 and Social Security Administration Claims Manual §§ 5500 *et seq.*

INTERROGATORY #1:

When were the new procedures promulgated?

A. On January 14, 1971, the Commissioner of Social Security approved a policy whereby in any case where Title II Social Security benefits are withheld to recover an overpayment the beneficiary must be advised (at the time he is notified of the Administration's action) of his right to request reconsideration by the Administration of the overpayment determination and of the provisions of the Social Security Act (42 U.S.C. 404(b)) governing waiver of recovery of overpayments. This policy was promulgated in the Social Security Regulations (20 C.F.R. sections 404.502(a) and 404.907 on May 25, 1972 (37 Fed. Register, May 25, 1972)). As described in answer to Interrogatory #3 below, the Administration's operating personnel were instructed to implement this portion of the new procedures in June 1971. The remainder of the new procedures are contained in Section 5503 of the Claims Manual of the Social Security Administration (operating guide for Administration personnel) as set forth in paragraphs 32-35 of Mr. Hugh F. McKenna's affidavit in the case of the plaintiff Molina, and paragraphs 24-26 of Mr. Bernard Popick's affidavit in the case of the plaintiff Elliot.

INTERROGATORY #2:

Have the new procedures been put into effect?

A. Yes.

INTERROGATORY #3:

What was the effective date of the new procedures:

a. as to disability benefits recipients;
b. as to survivors benefits recipients;
c. as to old age benefits recipients.

A. Those portions of the new procedures described above which are contained in 20 C.F.R. 404.502(a),404.907 and Section 5503 of the Claims Manual of the Social Security Administration were put into effect as to *all* social security beneficiaries in the summer of 1971. They were at that time incorporated into the Social Security Claims Manual as Temporary Instructions T5500 and T5502 transmitted to all components by Transmittal Sheet No. 2593 dated June 1, 1971, and were distributed by mail to all Social Security Administration offices on or about June 15, 1971. Allowing time for delivery and reading by the staff responsible for effectuating such procedures in the actual processing of claims, it is estimated that this portion of the "new procedures" were fully effectuated by July 1, 1971. The remainder of the new procedures which apply to *all* beneficiaries are contained in Section 5503 of the Claims Manual and were transmitted to all components of the Social Security Administration with Transmittal Sheet No. 2743 dated March 22, 1972, by mailing about 2 weeks later. Allowing time for delivery and reading by the staff responsible for effectuating such procedures in the processing of claims, it is estimated that the new procedures were effectuated in all offices of the Administration by April 15, 1972.

INTERROGATORY #4:

If the answer to Interrogatory #2 is in the affirmative state in detail.

a. What specific instructions and training were given to personnel administering the new procedures in the payment centers?

A. All instructions implementing the new procedures are contained in the Claims Manual sections referred to

in answer to Interrogatory #3. These instructions were accompanied at the time of their issuance by Transmittal Sheets 2593 and 2743, respectively.

b. What specific instructions and training were given to personnel administering the new procedures in the District and Branch offices?

A. Same as (a), above.

c. When were these instructions referred to in subsections a and b distributed? Be specific as to dates.

A. Refer to answer to Interrogatory #3.

d. Identify with sufficient particularity to permit a motion for the production thereof all forms, books, pamphlets and other papers used in instructions and training personnel to administer the new procedures.

A. See answer to e below.

e. Will you supply these papers without a motion to produce? If so, please attach the answer to these interrogatories.

A. Section 5503 *et seq.* of the Claims Manual containing instructional guidelines, as set forth in Mr. McKenna's affidavits (answer to Interrogatory #1), may be examined and copies thereof obtained at any Social Security District Office. Transmittal Sheets Nos. 2593 and 2743 effecting changes in Section 5503 are attached hereto as Exhibits 1 and 2. Commissioner's Bulletin No. 117 dated August 2, 1971, is attached hereto as Exhibit 3.

INTERROGATORY #5:

If the answer to Interrogatory #2 is in the negative or if Interrogatory #3 is not appropriate, state in detail.

a. how are the new procedures being implemented at the current time?

b. to what extent are the new procedures not being implemented at the current time?

c. what steps has the Department taken to make certain that the new procedures will be implemented fully as to all Title II recipients?

A. Not applicable.

INTERROGATORY #6:

State the names and addresses of all persons residing in the State of Hawaii, whose Social Security Title II disability, survivors or old age benefits have been adjusted downward between March 1972 and January 1, 1973, pursuant to 42 U.S.C. § 404(a) in order to recoup alleged overpayments. If it is not possible to give this information for the State of Hawaii alone, please answer this question as to the smallest geographical unit which is convenient, i.e. Honolulu, Oahu, Western Hawaii.

A. The Secretary does not maintain geographical statistics and is unable to supply the information requested. The Secretary by law is prohibited from supplying the names and addresses of social security claimants who are not named as parties to this action. 42 U.S.C. 1306(a); Social Security Regulation No. 1, (20 C.F.R. 401).

INTERROGATORY #7:

State the names and addresses of the persons residing in the State of Hawaii whose Social Security Title II disability, survivors or old age benefits have been adjusted downward pursuant to 42 U.S.C. § 404(a) between March 1972 and January 1, 1973, in order to reduce or terminate their benefits under Title II. If it is not possible to give this information for State of Hawaii alone, please answer this question with reference to the same geographical unit which was used in answer in Interrogatory #6.

A. Refer to answer to Interrogatory #6.

INTERROGATORY #8:

State in detail how the new procedures would have been applied to Plaintiffs ELLIOTT and MOLINA if they had

been properly processed. Include which alternate procedures would have applied had they:

a. submitted a written response to the initial letter describing their complaints in general.

b. merely gone for an oral interview at their district office.

c. filed a formal request for reconsideration.

d. filed a formal request for waiver.

A. As demonstrated by paragraph 13 of Mr. McKenna's affidavit, and by page 4 of Defendant's Memorandum of Law, suspension of the plaintiff Molina's benefits were not authorized under either former or current procedures. There has been no overpayment determination in the plaintiff Molina's claim. Therefore if his case had been properly processed, his benefit payments would have been continued without any disturbance or notice of proposed administrative action.

Payments to Nicolasa Antonio, the plaintiff Molina's spouse (who is not a party to this suit) were erroneously stopped under former Claims Manual procedures as set forth in CM 5030, 5036, 5038, and 5040, Transmittal No. 2087, dated July 1968. (This administrative action was not undertaken in connection with an overpayment determination; no overpayment determination as to plaintiff's spouse had been made.) The former procedures enabled the district offices to request suspension of benefits pending further investigation of continued eligibility under certain conditions. Thus benefit payments were stopped not because of an overpayment determination but because it appeared that plaintiff's spouse was no longer entitled to benefits as his wife. (See Mr. McKenna's affidavit dated December 12, 1972, paragraph 13.) However, coexistent with these general instructions were specific instructions pertaining to the method of treating initial determinations in response to adverse claims from contesting parties as set forth in CM 7130 and 7134, transmittal number 2607 dated July 1971. Pursuant to those instructions the Administration was, as it is now,

required to contact the initial claimant, explain to him the potential effect of the contesting claim and afford him the opportunity to submit additional evidence to support his or her claim, *before benefit payments to the initial claimant were disturbed.* (Paragraph 31, Mr. McKenna's affidavit.)

Claims Manual transmittal number 2811 of June 1972 revised sections 5030, 5036, 5038, and 5040. The general policy for withholding benefits has been restated in CM 5030, currently in effect. (See Mr. McKenna's affidavit dated December 12, 1972, paragraphs 26-29). The procedure now in effect for terminating benefits as a result of an adverse claim is now prescribed in CM 7131. This procedure which replaces the former instructions in CM 7130 and 7134 has been in effect since August 1972 when it was issued under Claims Manual transmittal number 2841. The revised procedures provide for a 30 day advance notice in writing personally delivered during which the initial claimant may establish his right to payment and rebut the contesting claim. (See Mr. McKenna's affidavit dated December 12, 1972, paragraphs 30-31).

a. If the plaintiff had responded with a written submission which could have been construed as questioning the suspension, the Social Security Administration would have treated this communication as a request for reconsideration in accordance with the instructions in CM 7115 and 7117. In such an event plaintiff's benefits would have been reinstated immediately and he would have remained in current pay status until the reconsideration determination was completed.

b. If the plaintiff in an oral interview at the district office had questioned the determination that he had been suspended, district office personnel conducting the interview would have had the plaintiff file a formal request for reconsideration. Under these circumstances plaintiff's benefits would have also been reinstated immediately and he would have remained in current pay status until the reconsideration determination was completed.

c. See answer to (a), above.

d. Not applicable.

With respect to the plaintiff Elliott, as demonstrated by paragraphs 12 and 27 of Mr. Popick's affidavit and by page 2 of Defendant's Memorandum of Law, the new procedures for the recovery of overpayments, CM 5503, were complied with in every respect except that the plaintiff was not notified of the possibility of partial adjustment. The plaintiff received notice of the overpayment by personal delivery to her home on April 28, 1972, which was over 30 days before the Administration took action to recover the overpayment by withholding the plaintiff's disability benefits. The plaintiff was afforded the requisite advance notice of the Administration's proposed action and was advised of her right to reconsideration and to establish that she qualified for waiver, and was informed that she should contact the Administration within 30 days if she wished to question the Administration's proposed action. However the plaintiff did not contact the Administration until almost a month after her benefit payments had been stopped. When she did contact the Administration, she did not request waiver or reconsideration. She instead stated that she wished to repay the overpayment by partial rather than full withholding of her benefits. The Administration effectuated this request 5 weeks later and restored to her all benefits which had been previously withheld which had exceeded the partial adjustment requested by plaintiff. (Mr. Popick's affidavit, paragraphs 20-21.)

a. If the plaintiff Elliot had responded with a written submission which could have been construed either as questioning the overpayment determination or as requesting waiver of the overpayment or both, the Social Security Administration would have treated this communication as a request for reconsideration and/or waiver. In accordance with Claims Manual 5503(c) the Social Security Administration would also have deferred the recoupment action pending a reconsideration and/or a waiver determination. As indicated in paragraph 26 of Mr. Popick's affidavit, if a claimant questions the correctness of the overpayment determination there will be both a reconsideration of the initial overpayment determi-

nation and an initial determination with respect to waiver. Although a formal request for reconsideration is the customary procedure in accordance with 20 C.F.R. 404.910, reconsideration will also be undertaken where the beneficiary submits a written statement from which such a request can be inferred as set out in CM 5503(c). If, as in the case of the plaintiff Elliott, the beneficiary's written response does not appear to question the overpayment determination or ask for waiver but does ask for partial adjustment, the Administration will then determine whether or not partial adjustment is warranted, as was done in this case.

b. If the plaintiff in an oral interview at the district office had questioned the determination that she was overpaid, district office personnel conducting the interview would have had the plaintiff file a formal request for reconsideration. Similarly, if in an oral interview the plaintiff had indicated that hardship and/or other reasons should excuse her from repaying the overpayment, district office personnel would have had the plaintiff file a formal request for waiver. Instructions to guide Social Security Administration personnel with respect to advising claimants of the administrative procedures are set out in CM 7108 *et seq.*, which may be examined and copies thereof obtained from a social security district office (CM 7404).

c. See answer to (a) above.

d. See answers to (a) and (b) above.

INTERROGATORY #9:

State in detail how the new procedures would have been applied to Plaintiffs CARL and NANCY YAMASAKI, SSAN 576-38-2979HA, 576-2979HB2, respectively, if they had been properly processed. Include which alternate procedures would have applied had they:

a. submitted a written response to the initial letter describing their complaints in general.

b. merely gone for an oral interview at their district office.

c. filed a formal request for reconsideration.

d. filed a formal request for waiver.

A. The above named individuals are not parties to the instant civil action. The Secretary has not been served with any pleadings relating to the above named individuals and is unaware of any court order allowing them to intervene in this action.

The Federal Rules of Civil Procedure restrict to use of discovery to matters relating "* * * to the claim or defense of the party seeking discovery or to the claim or defense of any other party * * *" Fed. R. Civ. P. 26(b). The use of interrogatories is restricted to matters within the purview of Rule 26(b) by Fed. R. Civ. P. 33(b). Since the above named individuals are not parties to this suit and since any information concerning their social security benefit status would not assist the named plaintiffs in the claim or defense of this action, the Secretary is not required to respond to this Interrogatory.

INTERROGATORY #10:

Identify with sufficient particularity to permit a motion for the production thereof, all forms, papers and letters which would be sent to Plaintiffs MOLINA and ELLIOTT if they were processed under the new procedures. Will you supply these papers without a motion to produce? If so, please attach to the answers to these interrogatories.

A. Samples of notices that are to be sent to beneficiaries at least 30 days in advance of a proposed overpayment determination and recoupment action may be found at Section 5508 of the Claims Manual, which may be examined and copies thereof obtained at a Social Security District Office. Such revised forms were incorporated in the Claims Manual on March 22, 1972, with Transmittal Sheet No. 2743 (Exhibit 2 attached hereto).

INTERROGATORY #11:

List the names of all persons processed through the San Francisco Payment Center in San Francisco, California

who were sent any notice of the Department's adjustment, or intent to adjust Title II benefits during the period.

a. from August 17, 1972 through and including September 1, 1972;

b. from October 9, 1972 through and including October 13, 1972;

c. from January 1, 1973 through and including January 10, 1973.

A. Refer to answer to Interrogatory #6.

INTERROGATORY #12:

List the names of all persons processed through the San Francisco Payment Center who were sent a notice as described in section 5503 of the Social Security Administration Claims Manual (hereinafter "Manual") during the period.

a. from August 17, 1972 through and including September 1, 1972.

b. from October 9, 1972 through and including October 13, 1972.

c. from January 1, 1973 through and including January 10, 1973.

A. Refer to answer to Interrogatory #6.

INTERROGATORY #13:

Attach a copy of the notice sent to each person named in answer to Interrogatories #13 and #14.

A. Not applicable.

INTERROGATORY #14:

List the names and attach a copy of any and all responses of claimants to the Notice described in Interrogatories #14 and #15, including but not limited to:

a. letters to the District Office and Branch Offices;

b. letters to the Payment Center;

c. Requests for reconsideration;

d. Requests for Waiver;

e. Any other written or oral response.

A. Refer to answer to Interrogatory #6.

INTERROGATORY #15:

For each person named in answer to Interrogatory #14 describe:

a. how long was recoupment or partial recoupment or adjustment delayed?

b. What action was taken by the Department on each response?

c. Identify with sufficient particularity to permit a motion for the production thereof, all forms, papers and letters which were sent to each person named in answer to Interrogatory #14.

d. Will you supply these papers without a motion to produce? If so, please attach to the answers to these interrogatories.

A. Not applicable.

INTERROGATORY #16:

List the names of all persons processed through the Bureau of Disability Insurance, Baltimore, Maryland, who were sent any Notice of the Department's adjustment or intent to adjust Title II benefits during the period:

a. From August 17, 1972 through and including September 1, 1972.

b. From October 9, 1972 through and including October 13, 1972.

c. From January 1, 1973 through and including January 10, 1973.

A. Refer to answer to Interrogatory #6.

INTERROGATORY #17:

List the names of all persons processed through the Bureau of Disability Insurance, Baltimore, Maryland, who were sent a notice as described in section 5503 of the Social Security Administration Claims Manual (hereinafter "Manual") during the period

a. From August 17, 1972 through and including September 1, 1972.

b. From October 9, 1972 through and including October 13, 1972.

c. From January 1, 1973 through and including January 10, 1973.

A. Refer to answer to Interrogatory #6.

INTERROGATORY #18:

Attach a copy of the notice sent to each person named in answer to Interrogatories #16 and #17.

A. Not applicable.

INTERROGATORY #19:

List the names and attach a copy of any and all responses of claimants to the Notice described in Interrogatories #16 and 17, including but not limited to:

a. letters to the District Office and Branch offices;

b. letters to the Payment Center:

c. Request for reconsideration;

d. Requests for Waiver;

A. Refer to answer to Interrogatory #6.

INTERROGATORY #20:

For each person named in answer to Interrogatory #19 describe:

a. How long was recoupment or partial recoupment delayed?

b. What action was taken by the Department on each response?

c. Identify with sufficient particularity to permit a motion for the production thereof, all forms, papers and letters which were sent to each person named in answer to Interrogatory #27.

A. Not applicable.

INTERROGATORY #21:

Identify with sufficient particularity to permit a motion for the production thereof, all forms, papers and letters used by the Department under the new procedures in informing recipients of the intent of the Department to adjust disability, survivors and old age grants to recoup an overpayment all forms, papers and letters used by the Department to evaluate and process responses to the intent to adjust.

a. For each form described above, state the date on such form was issued.

b. Will you supply these papers without a motion to produce? If so, please attach to the answers to these Interrogatories.

A. Refer to answer to Interrogatory #10.

INTERROGATORY #22:

The following questions refer to hearings held pursuant to 20 C.F.R. § 404.918 and request for hearings made after the Secretary's reconsidered determinations that individual persons had received overpayments of Title II benefits, in the calendar year 1971 and 1972:

a. What was the average time period between the mailing of the reconsideration determination and the receipt of a request for hearing, in the year 1971?

b. Repeat for 1972.

c. What was the average time period between the receipt of a request for a hearing and the hearing itself, in the year 1971?

d. What was the average time period between the receipt of a request for a hearing and the hearing itself, in the year 1972?

e. What was the average time period between the hearing and the decision in 1971?

f. What was the average time period between the hearing and the decision in 1972?

A. The Social Security Administration does not maintain statistics regarding questions a. and b. Section 404.918 of Social Security Regulations No. 4, 20 C.F.R. 404.918, provides that a claimant may file a request for a hearing following a reconsideration determination within 6 months of the date of the reconsideration determination and this may be extended for "good cause" in accordance with section 404.954 of the Regulations. With respect to questions c. through f. the following is furnished: For calendar year 1970, upon receipt of a reconsideration request (all pertinent issues including overpayment issues) the median time for additional evidentiary development to accord the claimant maximum consideration is 74 days and the median time for a reconsideration determination to be rendered thereafter is 20 days. Upon receipt of a request for a hearing by an administrative law judge, the median time for a decision to be rendered is 96 days (during which all pertinent issues were considered). Comparable statistics are not available for 1971 or 1972.

INTERROGATORY #23:

Since the time the new procedures were implemented how many persons have been sent letters which comply wih Manual section 5503?

A. The Social Security Administration does not compile statistics of this nature.

INTERROGATORY #24:

Of the number of persons listed in answer to Interrogatory 31, how many persons were mailed a 5503 letter by the reviewing office?

b. how many persons were personally delivered letters by the District office?

c. how many persons were mailed letters by the District office?

A. The Social Security Administration does not compile statistics of this nature. Section 5503 of the Claims Manual specifies the types of situations in which notices will personally be delivered to the beneficiary. Refer to answer to Interrogatory #1 for text:

INTERROGATORY #25:

Of the number of persons listed in answer to Interrogatory #23:

a. how many had the actual adjustment extended beyond the 30 day period specified in 5503(b)?

b. how many had the actual adjustment extended beyond the 60 days?

c. how many had the actual adjustment extended beyond the 90 days?

d. how many had the actual adjustment extended beyond the 120 days?

A. The Social Security Administration does not compile statistics of this nature.

INTERROGATORY #26:

Of the number of persons listed in answer to Interrogatory #31 (sic):

How many contested the correctness of the determination or tried to establish a ground for waiver by:

a. writing a letter to their local office;

b. writing a letter to their payment center;

c. filing a request for reconsideration;

d. filing a waiver form;

e. making oral contact with their local office.

A. The Social Security Administration does not compile statistics of this nature.

INTERROGATORY #27:

List the persons at each reviewing office throughout the country who exercise discretion in allowing the 30 day deferrment period referred to in 5503(b) to be extended. For each person list:

a. name;

b. title;

c. office;

d. address;

A. This step is a part of the adjudicative process and it may be undertaken in the performance of the official duties by Administration employees throughout the country who are authorized to perform adjudicative functions. The Secretary of Health, Education, and Welfare has responsibility for the actions taken by employees of the Department within the scope of their official duties.

INTERROGATORY #28:

How many hearings did the Department hold in overpayment cases:

a. in 1971;

b. in 1972;

c. from January 1, through January 10, 1973.

A. This information for calendar year 1971 and later is not yet available.

INTERROGATORY #29:

Explain in detail how the post-adjustment hearings work specifying the following information:

a. how many hearings examiners are there?

b. what other staff works on hearing?

c. where are hearings held?

d. how long does an average overpayment hearing last?

A. Evidentiary development in Title II cases is mostly undertaken at the initial and reconsideration levels of the administrative process using the facilities and resources of Social Security District Offices and Payment Centers. At these stages of the administrative process most cases are concluded since only in a relatively few number do claimants advance their cases to an administrative hearing. Even as to those cases in which a *de novo* hearing is held in accordance with section 205(b) of the Social Security Act, 42 U.S.C. 405(b), the evidentiary development previously undertaken in the case, to that extent, conserves the administrative law judge's time and thus enables a smaller number of administrative law judges to handle the total number of cases that go to hearings. In paragraph 36 of Mr. Popick's affidavit as to plaintiff Elliott it is indicated that in 1970 there were 1,250,000 overpayment cases, that 12,000 requests for reconsideration were filed in such cases and that about 1,600 requests for a hearing were filed in such cases. (Paragraph 33 of the affidavit indicates that while there were in excess of 3 million new claims for retirement, dependents, and survivor benefits filed in 1969,

about 3,200 hearings were held with respect to such claims.) Rather than holding only 1,600 hearings with respect to a caseload of about 1,250,000 as presently obtains, a requirement to hold a hearing prior to withholding of benefits in overpayment cases would, in that category alone, increase the number of hearings to in excess of 1,000,000. In addition to a commensurate increase of personnel, such an increase in number of hearings would also necessitate an increase of facilities within which to hold the hearings.

As of October 1972, there were approximately 375 administrative law judges who are usually assisted by a hearing assistant and secretarial staff to handle *all* of the SSA hearing caseload responsibilities (retirement, dependents, survivors, disability, health insurance, and black lung benefits) involving issues of initial entitlement as well as post-entitlement issues. Administrative law judges are assigned by the Bureau of Hearings and Appeals of the Social Security Administration to each of 10 Department of Health, Education, and Welfare regional offices to conduct hearings for claimants or beneficiaries who reside in the respective geographical region. Approximately, these are as follows:

Region I (Boston)—	12
Region II (New York)—	48
Region III (Philadelphia)—	42
Region IV (Atlanta)—	95
Region V (Chicago)—	42
Region VI (Dallas)—	47
Region VII (Kansas City, MO)—	20
Region VIII (Denver)—	6
Region IX (San Francisco)—	53
Region X (Seattle)—	9

Section 7161 of the Claims Manual of the Social Security Administration (available for examination at a

Social Security District Office) provides that hearings are to be conducted in the 50 states, District of Columbia, Puerto Rico, and Virgin Islands and that hearings will normally be held within 75 miles of the claimant's residence.

The length of time a hearing proceeding will take will depend on the nature of the case, complexity, and the extent to which witnesses are presented to testify. An average time for a hearing cannot be estimated although a hearing proceeding will normally be conducted within 4 hours, or one-half of a business day. In addition to conducting the hearing proceeding, administrative law judge's case assignments entail responsibilities for contacting parties and witnesses with respect to scheduling cases; undertaking additional evidentiary development not previously obtained: e.g., obtaining official records of Federal or State agencies, other documentation, consultative examinations, etc.; after the hearing evaluating the documentary evidence and testimony of record and then issuing a decision in the case.

INTERROGATORY #30:

List the total number of persons from whom overpayments were assessed and whose benefits were adjusted in the years listed below. If possible, give this information for the State of Hawaii alone; if not, please answer this question with reference to the same geographical unit which was used in answer to Interrogatory #6:

a. 1971;

b. 1972;

c. January 1, 1973 through January 10, 1973.

A. The Social Security Administration does not compile statistics delineated as presented by this question. Records of the Social Security Administration show the following number of beneficiaries whose overpayment was initially established in calendar year 1971 and (1) has an outstanding overpayment of at least $200 *or* (2) an overpayment cannot be fully satisfied within the calendar year in which it is determined to exist.

1971:	105,400	Retirement and survivors beneficiaries
	33,700	Disability beneficiaries
	139,100	Total

Statistics are not maintained for cases where the overpayment is less than $200 and is satisfied in the calendar year in which it is determined to exist.

Records of the Social Security Administration show that the following number of persons in the categories as described above, were affected by *actions described below* taken at all levels of the administrative process and in court cases in calendar year 1971 *regarding disposition of assessed overpayments* of retirement, survivors, and disability benefits:

Actions	Number of Cases in 1971
Refund by beneficiary	34,300
Adjusted against subsequent benefits	24,700
Waived	11,100

Similar information is not yet available for periods after 1971.

INTERROGATORY #31:

Of the persons listed in answer to Interrogatory 30, how many ceased to be entitled to benefits: (If possible, give this information for the State of Hawaii alone; if not, please answer this question with reference to the same geographical unit which was used in answer to Interrogatory #6)

a. due to death, in

1. 1971;
2. 1972;
3. to date in 1973.

b. cessation of disability:

1. 1971;
2. 1972;
3. to date in 1973.

c. attainment of a certain age:

1. 1971;
2. 1972;
3. to date in 1973.

d. marriage:

1. 1971;
2. 1972;
3. to date in 1973.

e. other reasons, specifying the reasons:

1. 1971;
2. 1972;
3. to date in 1973.

A. The Social Security Administration does not compile statistics with regard to the base for termination of benefit entitlement. Defendant's Memorandum of Law in Support of Secretary's Motion to Dismiss and/or Motion for Summary Judgment at page 18 endeavors to illustrate that a prior overpayment cannot be adjusted against future benefit payments where entitlement has been determined to cease because of the various factors as herein set forth since termination of entitlement terminates the right to future benefit payments. Entitlement to the various categories of benefits will terminate on the basis of these conditions subsequent as provided in Sections 202 (retirement, dependents, survivor benefits) and Section 223 (disability benefits) of the Act, 42 U.S.C. 402 and 423. Statistics as to overpayment categories are maintained by the Social Security Administration only as set out in answer to Interrogatory #30.

INTERROGATORY #32:

List the total number of persons from whose benefits were reduced or terminated, for purposes other than overpayment recoupment, in the years listed below. If possible, give this information for the State of Hawaii alone; if not, please answer this question with reference to the same geographical unit which was used in answer to Interrogatory #6:

a. 1971;
b. 1972;
c. January 1, 1973 through January 10, 1973.

A. The Social Security Administration does not maintain records according to the category requested.

INTERROGATORY #33:

Of the persons listed in answer to Interrogatory 32, how many ceased to be entitled to benefits: (If possible, give this information for the State of Hawaii alone; if not, please answer this question with reference to the same geographical unit which was used in answer to Interrogatory #6)

a. due to death, in

1. 1971;
2. 1972;
3. to date in 1973;

b. cessation of disability:

1. 1971;
2. 1972;
3. to date in 1973;

c. attainment of a certain age:

1. 1971;
2. 1972;
3. to date in 1973;

d. marriage:

1. 1971;
2. 1972;
3. to date in 1973.

A. The Social Security Administration does not compile statistics with regard to the bases for cessation of entitlement.

INTERROGATORY #34:

State the total number of persons who were allegedly overpaid and whose Social Security Title II benefits were

adjusted on a timely annual report by the beneficiary herself or himself, as of: (If possible, give this information for the State of Hawaii alone; if not, please answer this question with reference to the same geographical unit which was used in answer to Interrogatory #6)

a. January 1, 1971;
b. January 1, 1972;
c. to date in 1973.

A. Refer to answer to Interrogatory #6.

INTERROGATORY #35:

Under the new procedures, before benefits are adjusted pursuant to 42 U.S.C. § 404(a), does the recipient have

a. the opportunity to appear personally and through counsel in front of an impartial hearing examiner?

b. the opportunity to present evidence orally?

c. the opportunity to confront and cross-examine adverse witnesses?

d. the right to a written decision by an impartial decisionmaker (sic) based solely on the rules and evidence adduced at the hearing?

e. the right to have the decision made on the basis of substantial evidence?

f. the right to subpoena witnesses and compel the production of records?

g. the right to see the records as to earnings and the computations of the Department.

A. a. — no
b. — yes
c. — no
d. — no
e. — yes
f. — no
g. — yes, as appropriate to the beneficiary.

Prior to an initial determination of an overpayment being effectuated, the notice of the determination is to be issued at least 30 days in advance of the recoupment action to be undertaken. As set out in the text of Section 5503 of the Claims Manual of the Social Security Administration (see answer to Interrogatory #1) the notice is to advise of the overpayment and how it occurred, the adjustment action to be undertaken, the right to reconsideration of the initial determination, and the requirements for consideration of waiver of recoupment of the overpayment or partial adjustment against benefits. The beneficiary is permitted 30 days from the date of the notice to respond to the notice and thus contest the proposed overpayment determination or to seek waiver or partial adjustment. If he does not so respond to the initial determination the recoupment action will be undertaken.

During the 30 day period, he may present evidence orally at a Social Security District Office which will reduce it to writing in a statement for his review and signature—which then becomes part of the evidence in his case (if he cannot come to the district office because of infirmity, a field representative would be available to visit him). He may also submit any additional evidence he wishes for purposes of rebutting the basis of the initial overpayment determination, and may also examine the evidence on which the determination is based as provided at Section 7305 of the Claims Manual (which may be examined at a Social Security District Office). And he may request consideration for waiver or partial adjustment against future benefits for recoupment of the overpayment. If the plaintiff within the pertinent 30 day period so indicates his wish to contest the initial determination by filing for reconsideration, formally or inferentially, or to seek waiver or partial adjustment, the recoupment action will be deferred until the matter is reconsidered and a reconsideration determination is issued or an initial determination with respect to waiver, if limited thereto. In the course of reconsideration, additional evidentiary development is undertaken in connection with all issues to be resolved as set forth in 20

C.F.R. 404.911 *et seq.* and Section 7120 of the Claims Manual (which may be examined at a Social Security District Office). As to confrontation of adverse witnesses at this stage of the proceeding, Section 5030(d) of the Claims Manual (which may be examined at a Social Security District Office) provides that payments to a beneficiary will not be interrupted until the beneficiary or his representative payee has been informed of the evidence and given an opportunity to confirm or deny the accuracy of the report. If denied, additional evidentiary development is undertaken to resolve the conflict. The beneficiary is also advised of the provisions of law that might afford him relief such as waiver and reconsideration.

Commissioner Robert M. Ball in the Commissioner's Bulletin dated August 2, 1972 (Exhibit 3 attached hereto) at the last paragraph thereof states that official policy and procedures must be implemented in the course of employees of the Social Security Administration properly carrying out their duties and that failure to do so may deny an individual such rights as are available to him. If, as in the instant case, instructions have not been wholly applied, then upon the case and deficiencies being brought to the attention of the Social Security Administration, the deficiencies will be corrected to the greatest extent possible so that wrongs in the individual case may be righted.

INTERROGATORY #36:

List with particularity what evidence a recipient must produce in order to avoid immediate recoupment of an alleged overpayment.

a. under pre-June 22, 1972 regulations.

b. under post-June 22, 1972 regulations.

A. Prior to implementation of the new procedures, the Claims Manual instruction in CM 5503(b) (TS# 2127 dated October 1968) provided that before the Administration began withholding benefits to recover an overpayment, the beneficiary or his payee would normally be

given reasonable opportunity to contest the correctness of the determination of overpayment or to establish that a basis exists for waiver or partial adjustment. The notice to the beneficiary advised that adjustment would be deferred 30 days. However, actual adjustment could at the discretion of the reviewing office be extended to a longer period where the facts in a given case, including but not limited to time case is being worked, cut-off dates, mailing time, etc., indicate that a 30-day period would be inadequate for consideration of the matter and reply by the beneficiary and reviewing office processing time. (This rule applied only to the processing of the overpayment action; it did not permit any delay in correcting an erroneous award or in withholding future benefits where deduction or nonpayment events applied.)

The above general rule, however, was not applicable under any of the following conditions:

1. The evidence in file clearly established that the overpaid person was not without fault.

2. The overpayment was equivalent to one month's benefit or less.

3. Entitlement would soon terminate (as, for example, in the case of a child almost age 18).

4. Waiver or partial adjustment development had been initiated. In such cases withholding would be deferred until development was completed. Where development would not be completed before the expiration of the 30-day period, the DO would wire or use dispatch mail, as appropriate, to advise the PC.

5. The overpayment was based on a voluntary annual report by the beneficiary. (In these cases an immediate adjustment action is taken.)

6. Benefits payable to the overpaid person were suspended or deferred at the time the decision was made to recover.

If the overpaid person did not protest the action within the time period allowed by the written notice, recovery

action was undertaken. If the overpaid person protested by raising some question about the correctness of the determination of the overpayment, or raised a question about recovery, waiver, or partial adjustment, the DO would obtain the necessary evidence and prepare a recommendation to the PC for disposing of the case. Thus, if the overpaid person requested reconsideration of the substantive determination, but also indicated that he believed relief from repayment should be granted if the decision was affirmed, the DO developed the possibility of waiver of adjustment or recovery of the overpayment at the same time it secured evidence to resolve the request for reconsideration.

Therefore, under the old procedures, the overpaid individual need not have submitted any evidence to avoid immediate recoupment action but merely have requested a reconsideration of the overpayment determination or for relief by waiver of recovery or through partial adjustment.

B. After implementation of the new procedures the instructions in CM 5503(b) (TS# 2743 dated March 1972) were modified to provide that before we start to adjust the overpayment against the benefits due a beneficiary, he or his payee will normally be given reasonable opportunity to contest the correctness of the determination or to establish that a basis exists for waiver or partial adjustment. The notice to the beneficiary advises him that adjustment will be deferred 30 days. However, actual adjustment may at the discretion of the reviewing office be extended to a longer period when the facts in a given case, including but not limited to time case is being worked, cutoff dates, mailing time, etc., indicate that a 30-day period would be inadequate for consideration of the matter and reply by the beneficiary and reviewing office processing time.

The only exceptions to this rule are:

1. The overpayment is based on an annual report by the beneficiary; or

2. The overpayment results from the superendorsement procedures under Section 205(n) of the Act

whereby payment of a combined check is made to the survivor. Under such circumstances, the surviving beneficiary is given advance notice of the adjustment action that will be taken to recoup the amount of the check which exceeds the amount to which the surviving individual is entitled in his own right. In the above two situations an immediate adjustment action is taken.

If the beneficiary responds raising some question about the correctness of the determination of overpayment, or raises a question about recovery, waiver or partial adjustment, the DO will obtain the necessary evidence and prepare a recommendation to the reviewing office for disposing of the case. Thus, if the person liable requests reconsideration of the substantive determination and it appears that the determination will be affirmed, the DO will develop the possibility of waiver of adjustment or recovery of the overpayment at the same time it receives evidence to resolve the request for reconsideration. Thus, if the substantive determination is affirmed the reconsideration determination will cover both issues.

Where reconsideration of the overpayment determination, waiver, or partial adjustment development is initiated, withholding to recoup the overpayment will be further deferred and payment will be continued until development has been completed, if the beneficiary is otherwise entitled to benefits. If development will not be completed before the expiration of the 30-day period, the DO will utilize teletype to advise the reviewing office.

Where action has already been taken to recoup an overpayment, i.e., subsection (1) or (2) above, or where the beneficiary did not respond until after the deferral period, if the beneficiary requests either waiver, partial adjustment, or reconsideration of the overpayment determination and benefits are otherwise payable, payment of benefits will be initiated effective with the current operating month until such time as the issue has been resolved.

If the beneficiary does not respond to the written notice by the expiration of the time allowed, or responds without protest, the Administration will proceed to recoup the overpayment by adjustment where possible. If there are no subsequent benefits, such further recovery action as is appropriate will be taken.

Therefore, under the new procedures the beneficiary need not present any evidence to avoid immediate recoupment but need merely request a reconsideration of the overpayment determination or relief by waiver of recovery or partial adjustment.

INTERROGATORY #37:

List with particularity what evidence a recipient must produce in order to avoid immediate reduction or termination:

a. under pre-June 22, 1972 regulations
b. under post-June 22, 1972 regulations

A. Refer to #36 above.

INTERROGATORY #38:

List the names, titles and addresses of the persons employed by the Social Security Administration within the State of Hawaii who:

a. compile or collect the evidence produced by a recipient under § 5500 *et seq.*;

b. determine whether the evidence is sufficient to avoid adjustment;

c. determine whether the Social Security Administration will waive recoupment.

A. These actions are taken in the performance of official duties by Administration employees throughout the country who are authorized to perform adjudicative functions. The Secretary of Health, Education, and Welfare has responsibility for the actions taken by employees of the Department within the scope of their official duties.

INTERROGATORY #39:

Do employees of the local offices of the Social Security Administration explain (either written or orally) to recipients who have received notice of an adjustment?

a. what information served as the basis of the adjustment.

b. the sources of that information described in a.

c. what evidence the recipient must produce to stop that adjustment.

A. a. Yes
b. Yes
c. Yes

See CM 7108 for the applicable procedure.

INTERROGATORY #40:

If a recipient comes forward within the 30 day period referred to in Interrogatory 25(a) but the Social Security Administration determines that adjustment of his benefits will proceed:

1. Is the recipient informed of his right to appeal that determination?

2. Does he receive his pre-adjustment social security benefits while his appeal is pending?

3. Is he advised, and if so, what is he told concerning the length of time which an appeal usually takes?

A. 1. Yes. Such information is routinely furnished in the notice of the reconsideration and/or waiver determination.

2. Adjustment action is deferred during the course of developing a request for waiver of recovery or reconsideration. If the reconsideration determination affirms that the individual is overpaid and if relief is not granted—either through waiver of recovery of the overpayment or through partial adjustment, recovery action is taken while the beneficiary

pursues his administrative remedies beyond the reconsideration level.

3. Upon receipt of a reconsideration request the median time for additional evidentiary development to accord the claimant maximum consideration is 74 days. The median time for a reconsideration determination to be rendered thereafter by the Administration is 20 days. Upon receipt of a request for an administrative hearing the median time for decision to be rendered is 96 days (during which all pertinent issues were considered). The claimant would be furnished this information if he requested it.

DATED: April *10*, 1973, at Honolulu, Hawaii.

/s/ Robert K. Fukuda
ROBERT K. FUKUDA
United States Attorney
District of Hawaii

VERIFICATION

I hereby verify that the foregoing answers to the interrogatories are true to the best of my knowledge.

/s/ Robert K. Fukuda
ROBERT K. FUKUDA
United States Attorney
District of Hawaii

Subscribed and sworn to before me
this 10th day of April, 1973.

/s/ Lumimi Y. C. Calderon
Deputy Clerk
U.S. District Court
for Hawaii

LIST OF EXHIBITS

	Exhibits
Claims Manual Transmittal Sheet No. 2593	1
Claims Manual Transmittal Sheet No. 2743	2
Commissioner's Bulletin No. 117	3

EXHIBIT 1

June 1, 1971

CLAIMS MANUAL TRANSMITTAL SHEET No. 2593*

Listing of Material Included in This Transmittal

OVERPAYMENTS

New Material	*No. of Pages*
§§ T5500-T5502	1

Explanation of Claims Manual Changes

This transmittal revises the policies and procedures for notifying an overpaid individual of the possibility of waiver. It also changes the policies and procedures dealing with notice of the right to reconsideration.

A recent court action (*Baker* v. *Finch*, U.S. District Court, N.D. Ga.) questioned the Administration's current policy of not notifying all beneficiaries of the possibility of waiver when they were determined to be overpaid. The Court indicated that the failure to give notice of the waiver provisions of the law to all beneficiaries alleged to have received overpayments may violate their right to procedural due process, and expressed the view that such notice should be given to all individuals found to be overpaid.

As a result of this decision, and because it is felt a similar exceptional situation with respect to notification of reconsideration rights is questionable, the following changes in policy have been approved by the Commissioner:

(1) In all notices of determinations of overpayment the individual liable shall be informed of the statutory provisions for waiver.

(2) The exception to our usual rule on notice of reconsideration rights (where a suspension or termination

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* TS No. 2592 covered CM Part 9 material.

action is based only upon facts reported by the claimant) is to be eliminated and notice given in connection with all notices of initial determinations.

These changes are effective immediately. Necessary revisions in other instructional material will follow.

ACTION NOTES

§ 5503(*a*).—Cross refer to § T5501. In (*a*)(4), delete the exception by placing a period after "(sec. 204(b))" and strike out balance of item 4.

In (a)(6) second line, delete the exception by placing a period after "determination" and delete remainder of paragraph.

§ 5587.8(*a*)(4), 4th line.—Delete the exception by placing a period after "waiver" and strike out balance of item 4.

§ 7105.—Delete last sentence.

§ 7106(*a*).—Cross-refer to § T5500. In sixth line place a period after "reconsideration" and delete balance of paragraph.

§ 7106(*c*).—Delete.

§ 8735.—Cross refer to §§ T5500-T5502.

NOTE TO ALL PAYMENT CENTERS AND DIVISION OF INTERNATIONAL OPERATIONS:

Distribute this transmittal to all Recovery Reviewers as well as to Claims Manual holders.

T5500. Notice of Right to Reconsideration of Initial Determination.—The notice of an initial determination will in *all* cases include a paragraph informing the individual of his right to reconsideration. This includes cases in which the determination is that a deduction or termination is to be made based upon facts reported by the claimant.

T5501. Written Notice of Overpayment—Inclusion of Statutory Provisions for Waiver.—When it is determined that an incorrect payment has been made, the written notice to the person liable will in all cases inform him of

the waiver provisions in the law—Social Security Act, sec. 204(b) in title II overpayments and sec. 1870(c) in title XVIII overpayments.

T5502. Notices About Overpayments—Sample Letters.—Sample letters in § 5508 (Exhibits 1-3) should be modified so that the reconsideration paragraph will be included in all instances when used as a basis for notices prepared for beneficiaries.

EXHIBIT 2

CLAIMS MANUAL TRANSMITTAL SHEET
No. 2743*

OVERPAYMENTS

New Material	*No. of Pages*	*Replaces*	*No. of Pages*
§§ 5502(*b*)-5508 (cont.) Exhibit 5	13	§§ 5503(*a*)-5508 (cont.), Exhibit 5	13
§§ 5517(*a*)-5521(*a*)	4	§ 5517(*a*)-5520.2	4
		§ T5502	1

Explanation of Claims Manual Changes

This transmittal makes a number of changes in policies and procedures as part of the effort to safeguard the rights of beneficiaries. Some changes are also made in the tolerance for recovery of overpayments to achieve manpower savings.

5503. Summary of Procedures for Dealing With Overpayments

(a) Written Notice

Expands the initial overpayment notice to inform the overpaid person of the availability of partial adjustment or partial refund. Also, changes the criterion for personal delivery of the overpayment notice from "3 months' benefits" to "6 months' benefits."

(b) Delaying in Withholding Benefits to Recover Overpayment

Points out the general rule of deferring adjustment action to recover an overpayment, except for the following situations:

(1) The overpayment is based on a timely annual report by the beneficiary. In this respect, we are currently

* TS No. 2742 covered CM Part 8 material.

in the process of defining and analyzing various alternatives which may allow for the elimination of this exception. However, we expect that it will take some time to arrive at final decisions; *or*

(2) The overpayment results from the superendorsement of a combined check after the death of the copayee. Under such circumstances the surviving beneficiary is given advance notice of the adjustment action that will be taken to recover the overpaid amount.

(b) Person Liable Protests

This section now provides that when the overpayment is based on a timely annual report and benefits are being withheld to recoup the overpayment, if the beneficiary requests waiver, partial adjustment, or reconsideration of the overpayment determination, payment of current benefits otherwise payable, will be promptly initiated and continued until such time as the issue has been resolved.

5506. DO Delivery of Initial Notice to Persons Liable

Provides the DO with discretion to dispense with personal delivery of the initial overpayment notice in unusual cases.

5507.2 Overpayment Procedures Chart—Entitlement Not Terminated

The tolerance for referring overpayment recovery requests (SSA-5095) to the DO where benefits have not terminated has been changed to "over 6 months' benefits."

5516-5517.5 Partial Adjustment

The procedures have been simplified so that hardship will be presumed if the beneficiary requests that his overpayment be recouped by partial adjustment in the absence of evidence to the contrary. A Refund Questionnaire will be necessary only if there is some reason to question the presumption.

ACTION NOTE

§ 5526(*b*), Second sentence—Change "3 months' benefits or $200, whichever is greater" to "6 months' benefits."

NOTE TO ALL PAYMENT CENTERS AND DIVISION OF INTERNATIONAL OPERATIONS:

Distribute this transmittal to all Recovery Reviewers as well as to Claims Manual holders.

March 22, 1972

EXHIBIT 3

Commissioner's Bulletin

SOCIAL SECURITY ADMINISTRATION

Number 117 August 2, 1971

DUE PROCESS IN THE SOCIAL SECURITY PROGRAM

To Administrative, Supervisory, and Technical Employees

We in SSA are now in the process of taking a close look at our policies and procedures on terminating and suspending benefits to make sure that in every regard they safeguard the rights of all social security beneficiaries. As a result of this review, we are finding a few places where we need to change or provide further emphasis. I would like to share with you some of the reasons for the actions we are taking, and to ask all of you to help make our policies effective.

Several recent court cases raised the question of whether SSA's procedures for suspending and terminating benefits provide for administrative "due process"—that is, whether they protect the beneficiary's right to receive a full explanation and a chance to tell his side of the story before we take action affecting his benefits. Most of these court cases appear to have been stimulated by a landmark Supreme Court decision, *Goldberg* v. *Kelly*. In this case, the Supreme Court ruled that before a welfare recipient's payments are stopped, he has the right to a hearing at which he can present evidence to show why he believes they should not be stopped.

Although this decision was limited to welfare recipients, several court actions have been filed in which social security beneficiaries have claimed the same right to a hearing before benefits are reduced, terminated, or suspended. Two recent United States district court decisions could have a major impact upon SSA's procedures. In *Wright* v. *Finch*, the court ruled that before a dis-

abled person's benefits could be suspended, he must first be given an explanation for the proposed suspension, and allowed to examine the documents on which the suspension would be based and to present any evidence he has in support of his claim for continued benefits. The case of *Baker* v. *Finch* questioned SSA's procedures for suspending benefits when it is necessary to recover an overpayment. The court did not rule that SSA must provide a hearing in all cases before recovering an overpayment. It did say, however, that it believed SSA must inform *all* overpaid beneficiaries of the "waiver" provisions in the law before taking recovery action.

It is not clear exactly what the full implications of these court decisions will be. Also, a number of cases on the same or related issues (including the *Wright* case) are still pending before the courts. However, there is no need to wait until all the issues are decided by the courts before we take action. If there are policies or procedures in SSA that do not give beneficiaries due process, it is our obligation to seek out these policies and procedures on our own initiative and see that they are changed. As we reevaluate our work in this light, a number of questions come to mind:

- Are there any situations where we may have deprived beneficiaries of due process by failing to develop all the pertinent facts in a case, and reporting them to the decisionmaker?
- Are there any instances in which we make a decision to stop payments where we are making that decision too quickly, without sufficient evidence?
- Are our procedures adequate to give the beneficiary his "day in court" whenever we stop his benefits?
- Are we telling the beneficiary about all his rights and making sure that those rights are fully protected?
- Is there anything more we should be doing to be sure that we are not depriving beneficiaries of their benefits without due process of law?

One example of a policy improvement we have already made involves the selection of representative payees for adults who seem unable to care for themselves but who have not been declared legally incompetent. Until recently, it was our policy to make a *final* determination of a beneficiary's inability to handle his own benefits based on the best available evidence (usually medical). If we decided a beneficiary was incapable, he was not given the right to a formal reconsideration or hearing. Late last year we changed the SSA regulations so that a person may request a hearing and judicial review on our decision regarding his capacity to handle benefits. This right to a hearing and an appeal is now available to all adult beneficiaries except those who have been judged legally incompetent.

Another change involves notifying a person of his right to a reconsideration of our initial determination. In the past, we explained this right in all cases *except* where a person's benefits were affected based upon facts he himself reported. In these cases, we assumed that the individual was aware of the effect of his report on his benefits and did not need to be told of his right of reconsideration when we suspended them. But this assumption may not always be valid. For example, a beneficiary may report earnings to us without understanding that the report will result in a determination of overpayment and a suspension of benefits. We have changed our instructions to require that every claimant be given notice of his right to reconsideration when an initial determination is made.

We have taken similar action regarding our procedures for notifying overpaid beneficiaries of the possibility of waiver. Until 1963, an overpaid beneficiary was not notified of the waiver possibility unless he protested the determination of overpayment. Since that time, we have given an explanation of the waiver provision to all overpaid persons unless (a) the amount of the overpayment is equal to 1 month's benefit or less, or (b) the overpayment is based on a voluntary annual report of earnings by the beneficiary, or (c) the evidence clearly indi-

cates that the beneficiary is *not* without fault in causing the overpayment. Even though many people in these categories would probably not be eligible for waiver if they requested it, the *right* to request waiver is guaranteed to all overpaid beneficiaries under the OASDHI program, and all overpaid beneficiaries should understand this right. Therefore, we have changed our procedures so that *all* beneficiaries will be advised of the waiver provision when they are overpaid.

Finally, we are reviewing our suspension, adjustment, and termination procedures to make sure they are flexible enough to meet the needs of the individual beneficiary. Not only must we fully inform people of their rights under the program, we must inform them in ways they can understand. We are now re-examining notices of termination, suspension, and reduction of benefits to see that they spell out clearly and simply the reasons why the action is being taken. This is especially important as we make increased use of the telephone and the mail in doing business with the public. We should also keep in mind that there may be some situations—for example, a complex overpayment—where a personalized letter would be more appropriate than a form or guide letter. When preparing such a letter, we must remember that our beneficiaries represent a wide range of formal education, social environment, and other factors that could be barriers to communication.

We will continue to look for additional ways to make our policies and procedures more equitable and flexible. But policies and procedures alone, no matter how equitable we make them, cannot guarantee that an individual who deals with SSA will receive due process. The best guarantee of that is concerned and dedicated employees who see the need to comply not merely with the literal meaning of policies and procedures, but also with their underlying purpose. This means all of us who meet the public, directly or indirectly, must make an extra effort to be sure that people we deal with understand our decisions,

the reasons for them, and their right to challenge them if they so desire.

/s/ Robert M. Ball
ROBERT M. BALL
Commissioner

DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS

1974

Nov 12 FILED APLT'S MOTION FOR STAY PENDING APPEAL. (McAvoy) USA

Nov 12 DOCKETED CAUSE & ENTD APPEARANCES OF COUNSEL.

Nov 12 FILED APLES' MEMORANDUM IN OPPOSITION TO MOTION FOR STAY. (to McAvoy) cs

Nov 12 Filed, as of November 8, 1974 in 74-1611, aplt's motion to consolidate appeals. (to McAvoy) cs

Nov 21 FILED CERT TRANSC OF RECORD ON APPEAL IN ONE VOLUME: PLEADINGS, ORIGINAL ONLY. ONE BOX OF EXHIBITS FILED IN RM. 219. cl

Nov 21 Appellant's brief due Dec 12, 1974. cl

Nov 26 Filed in 74-1611 Order (Goodwin & Sneed) consolidating appeals for purposes of consideration and oral argument; further Ordered aplts' brief in 74-3118 shall be filed on or before December 16, 1974; Aples' brief shall be filed on or before January 6, 1975 & Aplts' reply brief shall be filed on or before January 16, 1975. The Clerk shall calendar the cases for oral argument in San Francisco during the week of February 14, 1975. Aples' application for stay pending appeal in 74-3118 is hereby denied. cs

Dec 5 Filed order (Sneed) amending in the last paragraph court's order entered 11/26/74; upon due consideration, aplt's application for a stay pending appeal in 74-3118 is hereby denied. jr

Dec 6 Rec'd aple counsel's letter eliminating Robert J. LeClair as attorney of record. jr

Dec 10 FILED AS OF DECEMBER 4, 1974 TWO ADDITIONAL COPIES OF RECORD, VOL I. cl

DATE	FILINGS—PROCEEDINGS

1974

Dec 13 Filed aplt's motion for leave to file brief in typewritten form and to supplement record references to (C) with copy of brief. jr

Dec 24 Filed order (C) granting aplt leave to file brief in typewritten form and to supplement record references. jr CALENDARED 2-10-75 S.F.

Dec 24 FILED APPELLANT'S TYPEWRITTEN BRIEFS. cs (panel)

1975

Jan 7 FILED ORIG & 24 APPELLEE'S BRIEF (1-6-75) to (panel) sj

Jan 8 RECEIVED ORIG & 24 APPELLANT'S BRIEF (12-12-75) (panel) sj

Jan 13 Filed motion & order (Br) directing clerk to file the brief. jr

Jan 13 FILED 25 APPELLANTS BRIEF (12/12/74). cl To panel.

Jan 20 Filed aplt's motion for leave to file reply brief in typewritten form. To panel w/ copy of brief. cl

Jan 22 Received aple's letter in 74-1611 requesting thirty minutes additional time for argument. To panel. cl

Jan 23 Filed order (Br) granting aplt leave to file reply brief in typewritten form. jr

Jan 23 Rec'd, in 74-1611, additional citations for aples in 74-3118 to (panel). jr

Jan 23 FILED 4 APPELLANTS REPLY BRIEFS (1/16/75). cl (TYPEWRITTEN)

Jan 29 FILED 25 APPELLANTS BRIEFS (1/16/75). To panel. cl

Feb 3 Rec'd, in 74-1611, aples' (Elliott, et al) add'l citations to panel. jr

DATE	FILINGS—PROCEEDINGS

1975

Feb 3 Rec'd aples' (Buffington, et al) additional citations to (panel) in 74-1611. jr

Feb 4 Pursuant to instructions from the court; Clerk's letter advising counsel request for add'l time for oral argument has been denied. gb

Feb 10 Argued & submitted to Br, T, CJJ; & S. Williams, DJ.

Feb 10 Filed aple's additional authority. To panel. cl

Feb 25 Recvd, in 74-1611, government counsel's letter re add'l information requested during court session. (to panel) cs

Apr 24 Rec'd aplt's letter of additional citations to (panel). jr

Apr 30 Rec'd aple's letter for case to be decided without awaiting the Supreme Court's disposition of Eldridge v. Weinberger to (panel). jr

June 13 Recd aple's letter of June 11, 1975 re recent decisions by CA, 3rd Cir. (panel) ec

Jun 30 Rec'd aplt's letter of additional citations to (panel). jr

Sept 18 Rec'd in 74-1611, aplt's letter of Sept 16, 1975 re recent decision in Fisher, et al. vs. Secy, HEW, et al., 7th Cir. (panel) ec

Sept 26 Rec'd aplts' letter of additional citations to (panel). jr

Oct 1 ORDERED OPINION (S. WILLIAMS) FILED & JUDG TO BE FILED & ENTD

Oct 1 Filed opinion—Affirmed in part, reversed in part & remanded.

Oct 1 Filed & Entered Judgment. jr

Oct 13 Pursuant to instructions from Judge Browning, mandate not to issue until further of the court. jc

DATE	FILINGS—PROCEEDINGS

1975

Oct 30 Filed in 74-1611, appellees' motion & affidavit for ext of time in which to file Petition for Rehearing and suggestion for rehearing in banc. (panel) ec

Oct 30 Rec'd an orig. & 24 Petition for Rehearing and Suggestion of appropriateness of a rehearing en banc. (panel) ec (in 74-1611)

Nov 10 Filed in 74-1611, Order (Br) to file petition for rehearing, -acb-

Nov 20 Filed, in 74-1611, order (Melfi for the Court) defendants-appellants are requested to file a response to the petition for rehearing. jr

Dec 18 Filed in 74-1611, Appellants' opposition to Appellees' Petition for Rehearing and Suggestion of the Appropriateness of a Rehearing En Banc. (all active judges) ec

1976

March 4 Received Supreme Court notice that petition for certiorari was filed on February 27, 1976, assigned number 75-1234. wdt

March 4 Received Supreme Court notice that petition for certiorari was filed on February 27, 1976, assigned number 75-1234. wdt

Mar 15 Filed Appellees' motion for an order requiring the parties to submit supplemental briefs. (panel) ec

Mar 22 Rec'd from appellees letter dated March 15, 1976, re typo errors in motion for an order requiring parties to submit supp. briefs. (panel) ec

Mar 22 Filed Appellant's opposition to appellees' motion for order requiring the parties to submit supp. briefs, etc. (panel) ec

DATE	FILINGS—PROCEEDINGS

1976

Mar 30 Filed order (S. Williams) directing the parties to submit add'l briefs on the impact, if any, of the recent Supreme Court decision in *Eldridge* v. *Weinberger*, rr U.S.L.W., 4224 (February 24, 1976). Aplts' brief shall be filed within 30 days of the date of this order & the brief for aples shall be filed within 30 days of their receipt of aplts' brief. (Aplts brief due 4/29/76) jc

Apr 22 Filed Appellants' motion for ext of time to file supplemental brief. (panel) ec

May 3 Filed order (S. Williams) granting aplts an ext of time to file supplemental brief to and including May 24, 1976. -dmf-

May 26 Filed Appellants' motion for ext of time to file supp. brief. (panel) ec

June 1 Rec'd from Stanley E. Levin, Esq., letter dated May 27, 1976, re: aplts' motion for ext of time for filing supp. brief. (panel)

June 29 Filed order of Judge Spencer Williams granting appellants' motion for a thirty-day extension to June 23, 1976 to file their supplemental brief. wdt

June 25 Filed in 74-1611, aplts' motion for 7-day ext of time in which to file supp. brief. to Judge S. Williams ec

July 1 Filed in 74-1611, aplts' motion for a 28-day ext of time in which to file supp. brief. to Judge Wms., S. ec

July 2 Filed, in 74-1611, order (S. Williams) granting aplts a 7-day ext of time to file supplemental brief, to and including June 30, 1976. -dmf-

July 6 Filed, as of June 24, 1976, copy of Supreme Court order granting certiorari. To panel. wdt

July 6 CASE RE-OPENED—1534 prepared

DATE	FILINGS—PROCEEDINGS

1976

July 6 Filed, as of June 24, 1976, certified copy of Supreme Court order remanding this case and No. 74-1611 to this court pursuant to Mathews v. Eldridge, filed in the Supreme Court on February 24, 1976. To panel. wdt

July 9 Filed in 74-1611, order (Williams) granting aplts an ext of time of 28 days in which to file their supplemental brief; brief due July 28, 1976. -dmf-

July 30 Filed in 74-1611, aplts' motion for a 14-day ext of time in which to file supplemental brief. (S. Williams) ec

Aug 9 Filed, in 74-1611, order (Br) granting appellants' motion for a 14-day ext of time, to and including August 11, 1976. -pb-

Aug 13 Filed in 74-1611, aplts' motion for leave to file their supp. brief in typewritten form pending repro. to panel w/brief ec

Aug 30 Rec'd in 74-1611, Aplt's supplemental briefs (8/11/76) (motion for leave to file supp. brief in typewritten form, under submission) -pb-

Sept 7 Filed in 74-1611, aples' motion for ext of time in which to file responsive supp. brief. panel ec

Sept 13 Filed in 74-1611, order (S.Wms) granting aples 30 days (From Sept 10) ext of time in which to file responsive supp. brief. (Due Oct. 10, 1976)

Sept 15 Filed, in 74-1611, as of Sept 13, order (S. Williams) granting aplts leave to file supplemental brief in typewritten form. -dmf-

Oct 11 Filed aples' (Buffington & Biner) motion for ext of time in which to file responsive supp'l brief. Br, T. & S. Williams) ec

Oct 18 Filed, in 74-1611, order (S. Williams) granting aples' Buffington, Biner, etc) an ext of 30 days, to and including November 11, 1976 to file their responsive brief. jr

DATE	FILINGS—PROCEEDINGS

1976

Nov 12 Filed in 74-1611, appellees' motion for ext of time in which to file their responsive supplemental brief. (panel) ec

Nov 15 Filed, in 74-1611, order (S. Williams) granting aplees an ext of time of 30 days to file responsive supplemental brief (due December 10, 1976) -dmf-

Dec 3 Filed in 74-1611, Appellees' motion for ext of time in which to file responsive supplemental brief. (S. Williams) ec

Dec 8 Filed in 74-1611, order (S. Williams) Upon due consideration of the motion of aples, it is hereby ORDERED that the aples' are granted an ext of time of 7 days, to and including Dec. 17, 1976, in which to file their responsive brief. -fn-

Dec 9 Filed, in 74-1611, order (T) upon consideration of the motion of appellees for a 7-day ext of time, it is hereby ordered that the afore-said motion is granted. -dmf-

Dec 17 Filed in 74-1611, orig. & 25 copies Aples' (Elliott, Molina, Buffington & Biner) supplemental briefs. (12/16/76) -pb- to panel

1977

Mar 17 Filed in 74-1611, aples' motion for oral argument on aples' petition for rehearing & the pending reconsideration of the original decision required by the order of remand. (panel) ec

Mar 28 Filed in 74-1611, aplts' (USA, et al) response to aples' motion for oral argument. panel ec

July 1 Filed, in 74-1611, order (Br, T & S. Williams) aples' motion for oral argument is denied. jr

July 1 ORDERED OPINION (WILLIAMS) FILED & JUDG TO BE FILED & ENTD

July 1 Filed opinion—The judgments of the D.C.'s are affirmed in part and reversed in part, and the cases are remanded.

DATE	FILINGS—PROCEEDINGS

1977

July 1 Filed & Entd Judgment. -fn-

July 13 Filed in 74-1611, appellants' motion for ext. of time in which to file Petition for Rehearing. (panel) ec

Aug 4 Filed, as of July 28, in 74-1611, order (SPENCER WILLIAMS) On consideredation of aplts for a 30 day ext of time in which to file their petition for rehearing and suggestion for rehearing en banc, it is hereby ORDERED that the motion is GRANTED in case #'s 74-1611 & 74-2118. (Petition due 8-14-77) -fn-

Aug 17 Filed in 74-1611, aplts' motion for ext of time in which to file Petition for Rehearing. (panel) ec

Aug 24 Rec'd, in 74-1611, 25 copies Aplt's petition for rehearing and suggestion for rehearing en banc. 8-23 bc (panel)

Aug 27 Filed, as of 8/25/77, in 74-1611, order (Br) on consideration of the motion of aplts for a 10 day ext of time in which to file their petition for rehearing and suggestion for rehearing en banc, it is hereby ORDERED that the aforesaid motion is GRANTED. jr

Aug 27 Filed, in 74-1611, as of 8/25/77, 25 Aplts' Petition for Rehearing and Suggestion for Rehearing En Banc to (All Active Judges). jr 8/23/77

Dec 16 Filed, as of Dec. 15, in 74-1611, order (BR & T, CJJ & WILLIAMS, DJ) The petition for rehearing is denied and the suggestion for in banc rehearing is rejected in case 74-1611 & 3118. -fn-

1978

Jan 3 MANDATE ISSUED

Jan 16 Returned to D.C. Vol 1 of Pleadings ORIGINAL mm

Apr 27 Recd SC notice of filing on 4/21/78 petition for certiorari, assigned #77-1511. Th.

Oct 5 Filed certified copy of Supreme Court order granting certiorari on October 2, 1978. (panel) pn

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IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

No. 734-73C2

[Filed Dec. 11, 1973]

FANNIE BUFFINGTON and FRANCES BINER,
individually and on behalf of
ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

vs.

CASPER WEINBERGER, individually and in his capacity
as Secretary of the Department of Health,
Education and Welfare, DEFENDANT

COMPLAINT FOR MANDAMUS, INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

PRELIMINARY STATEMENT

Plaintiffs individually and on behalf of all other persons similarly situated, seek mandamus, injunctive, and declaratory relief in asking the Court to declare invalid and to enjoin the enforcement of 42 U.S.C. § 404, *et seq.* (Social Security Act) and regulations thereunder, which statute and regulations permit defendant Secretary of Health, Education, and Welfare to terminate the payment of benefits under 42 U.S.C. § 402 (old-age and survivors and old-age insurance benefits) without affording plaintiffs adequate notice and an oral evidentiary hearing prior to the termination or adjustment of such

benefits. The statute and regulations are challenged on the grounds that they are in conflict with the due process clause of the United States Constitution.

Plaintiffs seek a preliminary and permanent injunction prohibiting suspension, reduction, or adjustment of said benefits without affording notice and opportunity for a hearing which satisfy the requirements of the due process clause. Plaintiffs seek a preliminary and permanent injunction enjoining defendant from failing or refusing to restore all of plaintiffs' benefits which have been or will be suspended or adjusted without notice and a hearing.

Plaintiffs bring this action in mandamus to compel the defendant to obey certain statutory duties imposed on him by 42 U.S.C. § 404(a) and (b) and the regulations thereunder, which require the defendant to afford notice and a hearing, and, also, to make a pre-termination decision on the issues of fault and waiver.

JURISDICTION

1. Jurisdiction is conferred on this Court by:

a. 28 U.S.C. § 1361, in that this is an action in the nature of mandamus to compel the Secretary to perform duties owed to the plaintiffs and their class under the Fifth Amendment to the United States Constitution and the Social Security Act, and

b. 28 U.S.C. § 1331 (a), in that this is a civil action wherein the matter in controversy exceeds the value of $10,000.00 exclusive of interest and costs, and arises under the Fifth Amendment to the United States Constitution and the federal Social Security Act; or in the alternative 28 U.S.C. § 1346 (a)(2), in that this is a civil action against the United States, not exceeding $10,000.00 in amount, founded upon the Fifth Amendment to the United States Constitution and the federal Social Security Act and the regulations promulgated thereto; and

c. the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, which confers [jurisdiction] upon the federal courts to review federal agency action.

II

PLAINTIFFS

2. Mrs. Fannie Buffington, age 68, resides with her husband, Ossie Buffington, at 1525 26th Avenue East, Seattle, Washingon. She has been receiving social security benefits since her retirement. Frances Biner, age 68, resides with her daughter at 3015 East Cherry Street, Seattle, Washingon. Ms. Biner had been receiving benefits since her retirement in December, 1972.

III.

CLASS ACTION ALLEGATIONS

3. Plaintiffs bring this action as a class action under Fed. R. Civ. P. 23(a) and 23(b)(2) on behalf of all persons similarly situated.

4. The members of the class are all Social Security recipients, who are being or will be subjected to termination, suspension or reduction of their Social Security benefits pursuant to 42 U.S.C. §§ 404(a) and (b) without constitutionally adequate notice of the grounds for such action, and without a prior oral hearing on disputed issues relating to such action.

5. The exact size of the class is not known to plaintiffs, but, on information and belief, can be readily ascertained from information in possession of the defendant. Nevertheless, plaintiffs believe that the class, is so numerous that joinder of all members is impracticable.

6. There are questions of law or fact common to the class, to wit, whether defendant's termination, suspension or reduction of Social Security benefits without giving constitutionally adequate notice of the grounds for such action, and without granting a prior oral hearing on disputed issues relating to such action is violative of the Due Process Clause of the United States Constitution.

7. Plaintiffs' claim is typical of the claims of the class.

8. Plaintiffs can fairly and adequately protect and represent the interests of the class, as she is represented

by Seattle Legal Services Center, Inc., a non-profit public service legal services organization which has resources in civil litigation involving government benefits and constitutional questions, and which in the past has successfully protected in federal court the due process rights of indigents receiving government benefits.

9. The party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief for the class as a whole.

IV.

DEFENDANT

10. Defendant, Casper Weinberger is Secretary of Health, Education and Welfare, and as such is charged with the administration of Title II of the Social Security Act, 42 U.S.C. § 401 *et seq.*, and in particular with the responsibility of making determinations respecting the termination, suspension or reduction of benefits received by Social Security recipients. Moreover, under 42 U.S.C. § 405(a) he is charged with making such rules and regulations as are necessary to the enforcement, operation and execution of Title II of the Act.

STATEMENT OF FACTS

11. Plaintiff Frances Biner is a 68 year resident of Seattle, Washingon, whose primary source of income for 1973 was her Social Security benefits.

12. Ms. Biner retired on December 14, 1972, and shortly thereafter she received a social security check for over $1800.00. Thereafter she received monthly checks until October, 1973. Her monthly entitlement at this time is approximately $205.00.

13. In the latter part of September, 1973, Ms. Biner received a letter from the Social Security office informing her that there had been an overpayment in the amount of $2,233.60, and, consequently, her benefits would be withheld until the overpayments had been recouped. She was informed that she would not receive another

Social Security check until July, 1974. (A copy of that letter is attached as "Exhibit A"). She has not received any Social Security payments since that time.

14. In the middle of October, 1973, Ms. Biner received a second letter from the Social Security Administration, containing "without fault" and "waiver" or "hardship" forms which she was instructed to fill out and return to the Seattle office. Mis. Biner completed the forms and mailed them to the local office. [A copy of that letter is attached as "Exhibit B"].

15. On or about November 28, 1973, Ms. Biner requested a reconsideration of the overpayment. Such requests for reconsideration are decided by regional reviewing offices.

16. Prior to November, 1973, Ms. Fannie Buffington received monthly benefits of $89.90, while her husband received benefits of $159.30 per month.

17. During the 1st or 2nd week of October, 1973, Ms. Buffington received a letter from the Social Security office informing her that she had previously received an overpayment of $78.60, and consequently her November check would be reduced by that amount. (A copy of that letter is attached as "Exhibit C").

18. Two of three days after she received the letter Ms. Buffington went to the local Social Security office and informed an employee there that she could not afford to have her November check reduced by that amount. Ms. Buffington was told that a letter would be written to the regional reviewing office on her behalf.

19. On Friday, November 3, 1973, Ms. Buffington received a Social Security check in the amount of only $11.30.

20. On Monday, November 5, 1973, Ms. Buffington returned to the local office, where she was told that she would be notified when the reviewing office made a decision on her requests for waiver and partial adjustment.

21. On or about November 28, 1973, Ms. Buffington submitted a request for reconsideration to the local office.

22. The plaintiffs were not informed prior to the adjustment of their monthly checks of the reasons underlying the determination that the alleged overpayments

had occurred, nor were any hearings held prior to the termination or adjustment of their benefits.

23. Neither plaintiffs was ever notified that she had been determined to be with or without fault according to § 404(a) and (b) and the regulations thereunder, or that a waiver of overpayment had been considered. No hearings were held on those issues prior to the termination or adjustment of their benefits.

FIRST CAUSE OF ACTION—VIOLATION OF STATUTORY DUTY

24. Plaintiffs repeat, reallege and incorporate herein the allegations contained in paragraphs 1-23 of this complaint.

25. In attempting to recover alleged improper payments to plaintiffs, defendant has violated his statutory duty under 42 U.S.C. § 404(a) and (b), providing that, in cases where the Secretary finds that more than the correct amount of payment has been made, "there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."

26. 42 U.S.C. 404(b) clearly requires that *prior* to adjusting a recipient's social security benefits for an alleged overpayment the defendant must determine whether or not the recipient was without fault, *and*, in cases where the recipient is found to be without fault, the defendant must also determine whether such adjustment would defeat the purposes of the Social Security Act *or* would be against equity and good conscience.

27. Defendant made no such findings or determinations prior to "adjusting" plaintiffs payments for the months in question.

28. It is defendant's usual and routine practice to suspend, terminate, or reduce benefits without inquiry as to fault or as to whether recovery would defeat the purpose of the Act or be against equity and good conscience, and without affording the recipient an oppor-

tunity to have notice of and hear the evidence against him or her, and without an opportunity to present evidence on these matters.

29. In the implementation of 42 U.S.C. 404(b) the defendant routinely determines an amount to be recovered against the recipient and deducts the amount without notice or right to a prior hearing.

30. Although the recovery action is reviewable upon application by the recipient, the defendant does not provide opportunity for any hearing prior to the recovery action or opportunity for the plaintiffs to know and respond to the evidence or other information upon which the defendant makes his determination to "adjust."

31. Defendant's routine procedures impose an undue and unfair burden upon the plaintiffs to prove affirmatively that the defendant's prior ex parte determination was incorrect.

31. Defendant's routine procedures impose an undue and unfair burden upon the plaintiffs to prove affirmatively that the defendant's prior ex parte determination was incorrect.

32. Many members of plaintiffs' class are without the means or ability to bear this burden of proof and must suffer the loss of substantial benefits and be reduced to a position of debtors.

33. The prior ex parte determination to recover or recoup without a prior showing by defendant that the overpayment was made through the fault of the plaintiffs-recipients or would not defeat the purpose of the Act or be against equity or good conscience is an arbitrary and capricious decision and violative of the statutory duty owed plaintiffs by the defendant as required by 42 U.S.C. § 404(a) and (b).

34. Plaintiffs have no plain adequate or speedy remedy at law and this suit for mandamus, injunctive, and declaratory relief is their only means of securing such relief.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

VII.

SECOND CAUSE OF ACTION—VIOLATION OF DUE PROCESS

35. Plaintiffs repeat, reallege and incorporate herein the allegations contained in Paragraphs 1-34 of this complaint.

36. Title II of the Social Security Act provides for old age insurance benefits as a matter of statutory entitlement to persons who meet criteria set forth in § 202 of the Act, 42 U.S.C. § 402.

37. Plaintiffs were determined to have satisfied all conditions for receipt of such benefits and to the best of plaintiffs' knowledge, information and belief are now entitled to the payment of the benefits which defendant terminated, suspended or reduced.

38. Plaintiffs' benefits were terminated by defendant and his agents pursuant to 42 U.S.C. § 404(a) which provides that under certain circumstances "proper adjustment or recovery shall be made" whenever there is an overpayment of social security benefits.

39. Section 404(b) of Title 42 provides that no recoupment of overpayments of Title II benefits shall be taken pursuant to 42 U.S.C. § 404(a) from any person who is "without fault" if such recovery "would defeat the purpose" of Title II or "would be against equity and good conscience."

40. 20 C.F.R. § 404.508, a regulation promulgated by the Secretary to enforce the Social Security Act provides in pertinent part as follows:

> Adjustment or recovery will defeat the purposes of Title II in (but is not limited to) situations where the person from whom recovery is sought needs substantially all of his current income (including social security monthly benefits) to meet current ordinary and necessary living expenses.

The full text of the Secretary's regulations with respect to overpayment and recoupment are attached hereto as plaintiffs' "Exhibit O."

41. Pursuant to 42 U.S.C. §§ 404(a) and (b) and regulations promulgated thereunder, the defendant has allegedly made *ex parte* determinations that:

a. Plaintiffs have received an overpayment of social security benefits;

b. that said alleged overpayments should be recouped by suspending plaintiff's social security benefits for the months described above;

c. That plaintiffs were at fault within the meaning of 42 U.S.C. 404(b) in receiving said alleged overpayments; or

d. that if plaintiffs were "without fault" within the meaning of 42 U.S.C. § 404(b), the suspension of their social security benefits by defendant would not defeat the purpose of Title II of the Social Security Act or be against equity and good conscience.

42. Defendant's decision to suspend plaintiffs' social security payments violated the Due Process Clause of the Fifth Amendment to the United States Constitution in that:

a. It was a peremptory, ex parte decision;

b. The defendant has not given plaintiffs notice of the grounds for the decision or the evidence upon which it was based;

c. Defendant has failed to inform plaintiffs sufficiently of ways in which such a decision may be challenged;

d. Defendant failed to provide plaintiffs with an opportunity for a hearing prior to suspension of benefits which are necessary to maintain life;

e. Defendant failed to afford plaintiffs their right to confront witnesses and cross-examine;

f. Defendant's procedure unfairly places an undue burden upon plaintiffs to carry the burden of reestablishing entitlement without;

1. provision for payment of witnesses and expenses;

2. notice of evidence and witnesses and information upon which basis defendant terminated, suspended or reduced benefits.

g. The termination of the benefits prior to any hearing reduces the recipients' income and removes any resources recipients might otherwise use to secure counsel, witnesses and other information.

43. The suspension of plaintiffs' benefit payments pursuant to the statute without notice or hearing denies to plaintiffs that due process of law guaranteed by the Fifth Amendment to the United States Constitution by authorizing the taking of plaintiffs' property without hearing or notice.

44. By reason of his actions, the defendant has caused the plaintiffs and all other persons similarly situated extreme hardship, suffering, and anxiety, including inadequate food and the threat of inadequate shelter and the loss of both personal and real property. Plaintiffs and all other persons similarly situated have suffered and will continue to suffer severe and irreparable injury to their health and well-being as a result of such summary, *ex parte* "adjustments" of their Title II payments by defendant until the statute and procedures described above are declared illegal or unconstitutional and their enforcement and execution in said illegal manner is enjoyed by the Court.

45. Plaintiffs have no plain, adequate, or speedy remedy at law and this suit for mandatory and declaratory relief is their only means of securing such relief.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

THIRD CAUSE OF ACTION—DENIAL OF EQUAL PROTECTION

46. Plaintiffs repeat, reallege and incorporate herein the allegations contained in paragraphs 1-45 of this complaint.

47. Defendant has promulgated a multi-volumed *Claims Manual* which is, in essence, defendant's interpretation

of the Social Security Act and the regulations thereunder. It is a procedural manual which governs the day-to-day operations of all the Social Security Administration employees.

48. Section 5503.3 of said Claims Manual states in its relevant part that:

> 5503.3 DELAY IN WITHHOLDING BENEFITS TO RECOVER OVERPAYMENTS
>
> Before we start to adjust the overpayment against the benefits due a beneficiary, he or his payee will normally be given reasonable opportunity to contest the correctness of the determination or to establish that a basis exists for waiver or partial adjustment. The notice to the beneficiary will advise him that adjustment will be deferred 30 days. However, actual adjustment may at the discretion of the reviewing office be deferred for a longer period when the facts in a given case, including but not limited to time case is being worked, cutoff dates, mailing time, etc., indicate that a 30-day period would be Inadequate for consideration of the matter and reply by the beneficiary.
>
> The only exceptions to this rule are:
>
> (1) the overpayment is based on an annual report by the beneficiary; or . . . .
>
> [A copy of § 5503.3 is attached as Appendix E"]

49. Defendant has established two classes of recipients charged with overpayments. One class is afforded at least thirty days notice of defendant's intention to adjust the recipient's future benefits, and, in addition, is given an opportunity to contest the overpayment determination, and/or establish grounds for a waiver or partial adjustment prior to any such adjustment being made.

50. However, the members of the second class, as described in § 5503.3(1) are afforded nothing. Their benefits are simply adjusted, without notice or hearing.

51. It appears from defendant's actions that plaintiffs have been determined, without hearing, to be members of this second class.

52. In promulgating and applying this two-class system defendant has deprived plaintiffs of equal protection of the laws in violation of plaintiffs' rights to due process of the law as guaranteed by the Fifth Amendment of the United States Constitution, in that such classification is irrational, arbitrary, and capricious, and bears no rational relationship to any legitimate interest of the defendant.

53. As a result, by reason of his actions, the defendant has caused the plaintiffs and all other persons similarly situated extreme hardship, suffering, and anxiety, including inadequate food and the threat of inadequate shelter and the loss of both personal and real property. Plaintiffs and all other persons similarly situated have suffered and will continue to suffer severe and irreparable injury to their health and well-being as a result of such arbitrary, capricious and irrational classification.

WHEREFORE, Plaintiffs pray for relief as herinafter set forth.

RELIEF SOUGHT

WHEREFORE, plaintiffs respecfully pray that the Court:

1) Assume jurisdiction of this case.

2) Declare that this action be maintained as a class action pursuant to Federal Rules of Civil Procedure, Rule 23.

3. Enter a temporary restraining order and a preliminary injunction ordering defendant to:

a. restore to the named plaintiffs all the monies which have been withheld from their monthly Social Security benefits;

b. pay to all members of the class whose social security benefits are currently being adjusted, pursuant to 42 U.S.C. §§ 404(a) and (b), their regular monthly social security benefits, including all back benefits withheld unlawfully; and

c. provide plaintiffs and all other persons similarly situated with written notice and an opportunity for a hearing on the issues of overpayment, fault, hardship and equity and good conscience prior to adjusting such persons benefits.

4) Enter a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that:

(a) the defendant's practice of suspending, terminating and reducing benefits without prior notice of the reasons and opportunity for a factual hearing with right to confront witnesses and to present testimony and evidence is in violation of the Due Process Clause of the United States Constitution.

(b) Defendant's failure to determine that a recipient is with fault or that recovery would not defeat the purpose of the Social Security Act or be against equity and good conscience violates defendant's duties under 42 U.S.C. 404(b).

(c) That the defendant's practice and procedures that compel low income recipients of benefits to assume the burden of rebutting the defendant's ex parte determinations to suspend, terminate or reduce benefits and determinations to demand recovery and recoupment are unduly burdensome to plaintiffs, fundamentally unfair, and violative of the Due Process Clause of the Fifth Amendment to the United States Constitution.

(d) That the defendant's practice of granting notice and an opportunity to contest the overpayment determination, and/or establish grounds for a waiver or partial adjustment to one class of recipients while denying the same rights to a second class of recipients to which plaintiffs have been assigned is a denial of plaintiffs' rights to equal protection of the law in violation of the Due Process of the United States Constitution.

5) Issue a writ of mandamus ordering defendant, his successor in office, agents and employees to provide plaintiffs and all other persons similarly situated with written notice and an opportunity for a hearing on the issues of overpayment, fault, hardship and equity and good conscience prior to adjusting social security old age and disability insurance benefits, pursuant to 42 U.S.C. §§ 404 (a) and (b).

6. Award the plaintiffs all others similarly situated such further and alternative relief as the Court may deem just and equitable.

7. Award the plaintiffs their costs, disbursements, and attorneys fees in this action.

DATED THIS 7th day of December, 1973.

BY: /s/ Jeff Spence
JEFF SPENCE
Attorney for Plaintiffs

"EXHIBIT A"

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[SEAL]

SOCIAL SECURITY ADMINISTRATION
PAYMENT CENTER
San Francisco, California 94101

Bureau of Retirement
and Survivors Insurance

Refer to Claim Number:

538-18-4795 A

Frances S. Biner
3015 E. Cherry St.
Seattle, WA 98122

Date: Sep. 21, 1973

THIS REFERS TO YOUR ANNUAL REPORT OF EARNINGS FOR 1972 AND YOUR WORK REPORT FOR 1973

What You Reported

Earnings in 1972—$7257

Work Status at Time You Made Report—Not Working

THE STATUS OF YOUR CLAIM AS OF SEP. 1, 1973

Total Benefits Which Should Have Been Withheld to Date

1972—$2233.60
1973—None

Total Benefits Actually Withheld

1972—None
1973—None

Amount Needed to Adjust Your Claim to Date

1972—$2233.60
1973—None

Amount Due You

1972—None
1973—None

Regular Monthly Benefit Amount

$211.50 Less Med. Ins. Premiums

A review of your report shows you received $2233.60 more than you should have for 1972. To recover this amount, your regular monthly benefits will be withheld from Sep, 1973 through Jul, 1974. You will then be due a part of your benefit for Jul, 1974 and a check for $92.90 will be sent to you shortly after Aug 2, 1974. However, your benefits can be started immediately if you refund the amount due for 1972 by check or money order made payable to the Social Security Administration. Please put your claim number on the check or money order.

The above payment of $92.90 may be reduced by any unpaid medical insurance premiums due, or increased by any premiums paid in advance at the time you are due your next payment.

The total benefits actually withheld for last year represent only the benefits withheld based on last year's estimate of earnings. It does not include any benefits withheld to recover an overpayment for an earlier year.

If you have questions about your benefits, you may get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit an office, however, please take this notice with you.

/s/ Paul W. Quandt
PAUL W. QUANDT
Director of Operations

"EXHIBIT A-1"

If you believe this determination is not correct, you may request that your claim be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request.

1. How Your Work and Earnings Affect Your Benefits

   For taxable years ending after December 1972, if you earn $2,100 or less during the taxable year (usually January through December), nothing will be withheld from your benefits.

   If you earn more than $2,100 in the year, for each $2 of earnings above $2,100, $1 will be withheld from your benefits.

   However, regardless of total earnings in a year, benefits are payable for any month in which you neither earn wages of more than $175 nor perform substantial services in self-employment.

   Benefits are also payable for all months in which you are 72 or older, regardless of the amount of your earnings in months after you reach 72.

2. Report Any Significant Change in Your Work and Earnings to Any Social Security Office

   The amount of benefits payable to you for this taxable year has been determined on the basis of your work status at the time you made your annual report of earnings for last year and on the amount of earnings you expected for this year as shown on that report. You should report promptly to any social security office any change which will affect your payments, such as:

   a. If you go to work while under age 72 and expect to earn over $2,100 in the year;

   b. If you have previously reported that you expect to earn over $2,100 from work, but

      (1) You stop work, or

      (2) You do not earn over $175 for any month and you do not perform substantial services in self-employment, or

      (3) You expect to earn substantially more or less than you previously indicated for the year.

   Prompt reports enable us to make adjustments to your benefit payments when you have income from work. Delayed reports make it necessary for us to withhold benefits during periods when you may not have income from work.

   Any difference between the amount of benefits withheld based on your estimate of earnings and the amount that must be withheld on the basis of your actual earnings will be adjusted after the close of the year when you file your next annual report.

   If you have any questions about reporting, you should get in touch with any social security office.

3. Information About Medical Insurance Premiums

   a. *When monthly social security benefits are being paid to you—*

      If your premiums are paid up-to-date, 1 month's premium will be withheld from your benefit check each month.

      If you owe premiums for last year, the full amount owed will be withheld from your next check.

      If you owe premiums only for this year, only 1 month's premium will be withheld from your next check and at the end of the year we will make an adjustment for other premiums owed.

      Any excess premiums paid in advance will be refunded to you in a separate check.

b. *When monthly social security benefits are not currently being paid to you—*

If this is the first time your benefits are being withheld this year, you will be billed for any premiums you owe.

If your benefits were withheld earlier this year, we will not bill you now. At the end of the year, we will make an adjustment for any premiums due.

4. Information When You Have Been Overpaid

Under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:

a. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*

b. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason.

To decide whether repayment would cause you financial hardship, we will need a statement of your assets, and monthly income and expenses. If you think you meet both conditions or you wish to repay the overpayment by installments or have it withheld from benefits at a reduced rate over a longer period, call, write, or visit any social security office.

"EXHIBIT B"

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

[SEAL]

October 9, 1973

Refer to:

538-18-4795-A

Frances S. Biver
3015 E. Cherry St.
Seattle, WA 98122

Dear Mr. Biver:

Under social security law, an overpayment must be withheld from benefits or paid back unless both of the following are true:

1. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, and

2. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason.

To decide whether repayment would cause you financial hardship, we will need a statement of your assets, and monthly income and expenses.

If you think you meet both conditions, or if withholding the entire amount of your monthly benefits will cause you financial hardship, please complete and return to this office the enclosed forms. If you need assistance in completing the forms, please feel free to call this office.

Sincerely,

/s/ A. Bennett db
A. BENNETT
Claims Representative

AB/db
Enclosures

"EXHIBIT C-1"

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
[SEAL]
PAYMENT CENTER
Kansas City, Missouri 64108

October 3, 1973

Refer to Claim Number
460-14-2600-A

Bureau of Retirement
and Survivors Insurance

Fannie M. Buffington
1525 26 Ave. E.
Seattle, WA 98102

Information about your social security benefits is shown below:

1. Amount of your next check $11.30
2. Covers benefits due through October 1973
3. Will be sent about November 3, 1973
4. Amount of regular check thereafter $89.90

Based upon the insured individual's earnings, it has been determined that you have been overpaid in the amount of $78.60. Therefore, an adjustment is being made in your benefits to withhold the additional amount necessary.

If you are enrolled in the medical insurance program, please see item 3 on the back of this notice.

Please notify any social security office promptly of an event which might affect the payment of benefits. There is an explanation on the back of this notice of how work and earnings affect benefit payments.

If you have questions about your claim, you may get in touch with any social security office. Most questions can

be handled by telephone or mail. If you visit an office, however, please take this notice with you.

Sincerely yours,

/s/ R. W. Jacobson
R. W. JACOBSON
Director of Operations

"EXHIBIT C-2"

If you believe this determination is not correct, you may request that your claim be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request.

1. How Your Work and Earnings Affect Your Benefits

   For taxable years ending after December 1972, if you earn $2,100 or less during the taxable year (usually January through December), nothing will be withheld from your benefits.

   If you earn more than $2,100 in the year, for each $2 of earnings above $2,100, $1 will be withheld from your benefits.

   However, regardless of total earnings in a year, benefits are payable for any month in which you neither earn wages of more than $175 nor perform substantial services in self-employment.

   Benefits are also payable for all months in which you are 72 or older, regardless of the amount of your earnings in months after you reach 72.

2. Report Any Significant Change in Your Work and Earnings to Any Social Security Office

   The amount of benefits payable to you for this taxable year has been determined on the basis of your work status at the time you made your annual report of earnings for last year and on the amount of earnings you expected for this year as shown on that report. You should report promptly to any social security office any change which will affect your payments, such as:

   a. If you go to work while under age 72 and expect to earn over $2,100 in the year;

   b. If you have previously reported that you expect to earn over $2,100 from work, but

      (1) You stop work, or

      (2) You do not earn over $175 for any month and you do not perform substantial services in self-employment, or

      (3) You expect to earn substantially more or less than you previously indicated for the year.

   Prompt reports enable us to make adjustments to your benefit payments when you have income from work. Delayed reports make it necessary for us to withhold benefits during periods when you may not have income from work.

   Any difference between the amount of benefits withheld based on your estimate of earnings and the amount that must be withheld on the basis of your actual earnings will be adjusted after the close of the year when you file your next annual report.

   If you have any questions about reporting, you should get in touch with any social security office.

3. Information About Medical Insurance Premiums

   a. *When monthly social security benefits are being paid to you—*

      If your premiums are paid up-to-date, 1 month's premium will be withheld from your benefit check each month.

      If you owe premiums for last year, the full amount owed will be withheld from your next check.

      If you owe premiums only for this year, only 1 month's premium will be withheld from your next check and at the end of the year we will make an adjustment for other premiums owed.

      Any excess premiums paid in advance will be refunded to you in a separate check.

b. *When monthly social security benefits are not currently being paid to you—*

If this is the first time your benefits are being withheld this year, you will be billed for any premiums you owe.

If your benefits were withheld earlier this year, we will not bill you now. At the end of the year, we will make an adjustment for any premiums due.

4. Information When You Have Been Overpaid

Under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:

a. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*

b. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason.

To decide whether repayment would cause you financial hardship, we will need a statement of your assets, and monthly income and expenses. If you think you meet both conditions or you wish to repay the overpyament by installments or have it withheld from benefits at a reduced rate over a longer period, call, write, or visit any social security office.

STAN PITKIN
United States Attorney
CHARLES F. MANSFIELD
Assistant United States Attorney
1012 United States Courthouse
Seattle, Washington 98104
(206) 442-7970

CERTIFICATE OF MAILING

I certify that I mailed a copy of the foregoing document to which this certificate is attached, to the attorneys of record of plaintiffs, on the 11th day of March, 1974.

By /s/ L. Jones
United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. 734-73C2

[Filed Mar. 11, 1974]

FANNIE BUFFINGTON and FRANCES BINER, individually and on behalf of ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

—*vs*—

CASPAR WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education, and Welfare, DEFENDANT

ANSWER

COMES NOW the defendant Caspar W. Weinberger, as Secretary of the Department of Health, Education, and Welfare of the United States of America and, in

answer to plaintiffs' complaint, admits, denies, and alleges as follows:

1. Defendant denies that jurisdiction exists to consider this case as plaintiffs allege in parts (a), (b), and (c) of paragraph 1 of the complaint but rather, defendant states that jurisdiction over Social Security matters lies exclusively under section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

2. Answering the allegations contained in paragraph 2 of the complaint, defendant does not have sufficient knowledge to respond to the allegations concerning plaintiffs' current residence, however, defendant admits that plaintiff Biner has been awarded a retirement insurance benefit check for every month since she stopped working effective January 1973 and that plaintiff Buffiington has similarly been awarded retirement insurance benefits from September 1969 to the present.

3. With respect to the allegations contained in paragraphs 3 through 9 of the complaint, defendant denies that plaintiffs represent an ascertainable class of individuals for whom the granting of final injunctive and declaratory relief would be appropriate; defendant denies that plaintiff is entitled to any of the relief sought in paragraphs 3 through 9; and defendant denies the allegations in paragraph 3 through 9.

4. Defendant admits the allegations contained in paragraphs 10, 14, and 19.

5. Defendant lacks sufficient information or knowledge to answer the allegations contained in paragraph 11 with regard to the amount of time plaintiff Biner has been a resident of Seattle, Washington, or the state of her financial resources in 1973.

6. Defendant admits the allegations contained in paragraph 12, except to state that plaintiff Biner received a benefit check in the amount of $1,809.00 which represented benefits for January through August 1972 and that she has received additional benefit checks through the date of this civil action. Furthermore, plaintiff Biner is currently entitled to and is receiving $184.20 per month after deducting $50.00 per month because of an overpayment and $6.30 per month for her Medicare premium.

7. Defendant admits the allegations contained in paragraph 13 with the exception that defendant denies that plaintiff Biner did not receive retirement insurance benefits from September 1973 to the date of the filing of the civil action since plaintiff's social security records show that she has continued to receive benefit checks through the present.

8. Defendant admits the allegations contained in paragraph 15 of the complaint except to state that reconsideration determinations in cases involving retirement insurance benefits are decided in the Social Security Program Centers.

9. Answering the allegations contained in paragraphs 16 and 17 defendant states that plaintiff Buffington was receiving retirement and wife's insurance benefits until November 1973 and that her husband was receiving retirement insurance benefits. Defendant denies the allegations with respect to the amount of monthly benefits since the amounts changed from the time they were first received due to statutory benefit increases. Further, defendant states that plaintiff Buffington was notified by letter dated October 3, 1973 that based on her husband's earnings, an overpayment had occurred and that an adjustment in her November 3, 1973 check would be necessary.

10. With respect to the allegations contained in paragraph 18 of the complaint, plaintiff's social security file contains no evidence of a visit to the district office in October 1973, therefore, defendant denies the allegations in this paragraph.

11. With respect to the allegations contained in paragraph 20 of the complaint, defendant admits only that on or about November 6, 1973, plaintiff Buffington questioned the overpayment notice and the district office sought verification of the reasons for the overpayment.

12. Defendant does not have sufficient information at the present to respond to the allegations contained in paragraph 21 to the complaint and, therefore neither admits nor denies the same.

13. Answering the allegations in paragraph 22 of the complaint, defendant denies that plaintiffs were not notified of the reasons underlying the determination of overpayments in their respective cases but states that the proper procedures preliminary to adjustment of benefits were followed. Defendant admits that these procedures do not provide for a full *de novo* oral hearing prior to adjustment.

14. Answering the allegations contained in paragraph 23, defendant states all of the procedures to which plaintiffs were entitled with regard to overpayments have been afforded them in complete accordance with 204(a) and (b) of the Social Security Act, 42 U.S.C. 404(a) and (b).

15. Defendant reasserts his answers to paragraphs 1 through 23 of plaintiffs' complaint in response to the allegations contained in paragraph 24.

16. Defendant denies that he has violated his statutory duty as alleged by the plaintiffs in paragraph 25 of the complaint.

17. Defendant denies that plaintiffs' interpretation of section 204(b) of the Social Security Act, 42 U.S.C. 404(b) contained in paragraph 26 is correct.

18. With respect to the allegations contained in paragraph 27 of the complaint, defendant maintains that all necessary findings and determinations in accordance with the relevant procedures were made prior to the adjustment of plaintiffs' benefits.

19. Defendant denies the allegations contained in paragraphs 28, 29, and 30 and further states that beneficiaries such as the plaintiffs herein are given every opportunity prior to adjustment of benefits (short of a full *de novo* oral hearing) to present evidence relevant to the existence and recovery of an overpayment and whether or not the overpayment should be waived.

20. Answering the allegations contained in paragraphs 31 and 32 of the complaint, defendant denies the allegations therein and denies that the notification and recovery procedures in overpayment cases imposes an undue and unfair burden on the plaintiffs without providing them a fair opportunity to rebut the evidence indicating the existence of an overpayment.

21. Defendant denies that the above-mentioned overpayment procedures are as plaintiff describes them in paragraph 33 and defendant further denies that these procedures result in arbitrary and capricious decisions which are violative of the statutory duty owed to the plaintiffs.

22. Defendant denies the allegations in paragraph 34 of the complaint and further states that jurisdiction is exclusive under section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

23. Defendant reasserts his answers to the allegations contained in paragraphs 1 through 34 of the complaint in responding to paragraph 35 of the complaint.

24. Answering the allegations contained in paragraphs 36 and 37 of the complaint, defendant admits that plaintiffs are entitled to social security benefits if they meet the requirements of section 202 of the Social Security Act, 42 U.S.C. 402, but only to the extent that these benefits are not subject to deductions under section 203 of the Social Security Act, 42 U.S.C. 403; defendant denies that plaintiffs are entitled to benefits as alleged in paragraph 37.

25. With respect to the allegations contained in paragraph 38, defendant admits only that the adjustment to plaintiffs' benefits took place in accordance with the provisions contained in section 204(a) of the Social Security Act, 42 U.S.C. 404(a); defendant denies plaintiffs' benefits have been terminated.

26. Defendant admits the allegations contained in paragraphs 39 and 40.

27. Defendant admits the allegations contained in paragraph 41 of the complaint except to state plaintiffs' benefits were not adjusted until after plaintiffs had been given notice of the impending adjustment and an opportunity to rebut the reasons upon which the adjustments are based and an opportunity to assert and establish the appropriateness of waiver of recovery; furthermore, defendant denies the determinations were *ex parte*.

28. Answering the allegations contained in paragraphs 42 and 43 to the complaint defendant denies that the procedures employed by the Secretary in cases involving overpayments of benefits deny the plaintiffs their right to due process under the Fifth Amendment to the United States Constitution.

29. Defendant denies the allegations in paragraphs 44 and 45.

30. Answering paragraph 46, defendant reasserts his answers to paragraphs 1 through 45 of the complaint.

31. Defendant admits the allegations contained in paragraph 47 and 48 except defendant states that the provisions of the *Claims Manual* of the Social Security Administration are issued in strict compliance with the provisions of the Social Security Act.

32. Defendant denies the allegations contained in paragraphs 49, 50, 51, 52, and 53.

AFFIRMATIVE DEFENSE

33. For his affirmative defense defendant alleges that plaintiffs' complaint fails to state a claim upon which relief can be granted in that plaintiffs have failed to meet the jurisdictional requirements of section 205(g) of the Social Security Act, 42 U.S.C. 405(g). Section 205(g) is the sole basis for jurisdiction in cases arising under Title II of the Social Security Act. Furthermore, defendant states that plaintiffs have failed to meet their burden of proof in establishing jurisdiction as alleged under Title 28 U.S.C. §§ 1331(a), 1361, 1364(a)(2), and 5 U.S.C. § 701 et seq.

WHEREFORE, defendant prays that this Court:

1. Deny jurisdiction of this case.
2. Deny plaintiffs' request that this case be certified as a class action.
3. Deny plaintiffs' request for a temporary restraining order and a preliminary injunction.
4. Deny plaintiffs' request for a declaratory judgment.
5. Deny plaintiffs' request for issuance of a writ of mandamus.

6. Dismiss this action for failure to state a claim upon which relief can be granted and/or lack of jurisdiction over the subject matter.
7. Grant defendant alternative relief in the form of summary judgment in his favor.
8. Award defendant costs and such other relief as the Court deems just and equitable.

DATED this 11th day of March, 1974.

STAN PITKIN
United States Attorney

/s/ Charles F. Mansfield
CHARLES F. MANSFIELD
Assistant United States Attorney

JEFF SPENCE
SEATTLE LEGAL SERVICES CENTER
5308 Ballard Avenue N.W.
Seattle, Washington 98107
Phone: (206) 789-2450

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

No. 34-73C2

[Filed Dec. 11, 1973]

FANNIE BUFFINGTON and FRANCES BINER, individually and on behalf of ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

vs.

CASPER WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education and Welfare, DEFENDANTS

MOTION TO DECLARE CLASS ACTION

COMES NOW Jeff Spence, attorney for plaintiffs, and moves the Court for an Order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure declaring that this action may properly proceed as a class action pursuant to Rule 23(a) and 23(b)(2).

The members of the class are all Social Security recipients, who are being or will be subjected to termination, suspension or reduction of their Social Security benefits pursuant to 42 U.S.C. §§ 404(a) and (b) without constitutionally adequate notice of the grounds for such action, and without a prior oral hearing on disputed issues relating to such action.

DATED this 11th day of December, 1973.

/s/ Jeff Spence
JEFF SPENCE
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. 734-73C2

[Filed Apr. 8, 1974]

FANNIE BUFFINGTON and FRANCES BINER, individually and on behalf of ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

vs.

CASPAR WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education and Welfare, DEFENDANTS

ORDER GRANTING CLASS ACTION

This action having come on regularly for hearing before this Court on plaintiff's motion for declaration of class action, plaintiffs being represented by their attorney, Jeff Spence, and defendant being represented by his attorneys Charles Mansfield and Richard Wetmore, and the Court having considered the arguments of counsel and the file herein, now finds that

FINDINGS

1. The class is composed of all individuals eligible for Social Security benefits pursuant to 42 U.S.C. Section 402 whose benefits have been or will be reduced, suspended, terminated or otherwise adjusted without notice and opportunity for a prior hearing pursuant to Defendant's administrative interpretation of 42 U.S.C. Section 404.

2. The class is so numerous that joinder of all members is not practicable.

3. There are questions of law and fact common to the class.

4. The claims of the representative parties are typical of the claims of the members of the class.

5. The representatives of the class will fairly and adequately protect the members of the class.

6. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

ORDER

On the basis of the foregoing findings, It is Ordered That:

1. The action shall be maintained as a class action pursuant to F.R.Civ.P. Rule 23(b)(2);

2. The class shall be composed of all individuals eligible for Social Security benefits pursuant to 42 U.S.C. Section 402 whose benefits have been or will be reduced, suspended, terminated or otherwise adjusted without notice and opportunity for a prior hearing pursuant to Defendant's administrative interpretation of 42 U.S.C. Section 404.

DATED: April 4, 1974.

/s/ Morell E. Sharp
MORELL E. SHARP
United States District Judge

Approved as to form, Notice of Presentation Waived:

/s/ Charles F. Mansfield
CHARLES MANSFIELD
Asst. United States Attorney
Attorney for Defendant

Presented by:

/s/ Jeff Spence
JEFF SPENCE
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil Action No. 734-73C2

[Filed Apr. 23, 1974]

FANNIE BUFFINGTON AND FRANCES BINER, individually and on behalf of all others similarly situated, PLAINTIFFS

v.

CASPAR WEINBERGER, Secretary of Health, Education, and Welfare, DEFENDANT

PLAINTIFFS' INTERROGATORIES TO DEFENDANT; FIRST SET

Pursuant to the provisions of Rule 33 of the Federal Rules of Civil Procedure as amended, and upon information provided by the defendants, and on the basis of information provided by the Department of Health, Education, and Welfare, the answers to the plaintiffs' interrogatories are based upon the best information available. The "Claims Manual" references herein are to the Social Security Administration Claims Manual which is available for inspection by the public at any social security district office.

Interrogatory #1

Please provide the following information relating to Mrs. Frances Biner's application for retirement benefits:

(a) The date and location of the initial application;

A. Mrs. Frances Biner filed her application for retirement insurance benefits in Seattle, Washington, on October 5, 1970.

(b) The name of the Social Security Administration employee who handled her application; and

A. All actions taken in processing claims are done in the performance of the employees' duties on behalf of the Secretary of Health, Education, and Welfare.

(c) Any application forms, income reports, estimated earnings reports, and any other reports, and any other reports or forms completed by Mrs. Biner as part of the application process;

A. See Exhibit A for a photocopy of the application filed by Mrs. Biner which includes an estimate of her earnings. See Exhibit B for the report Mrs. Biner signed on August 28, 1973, regarding her earnings for 1972 and estimated earnings for 1973.

Interrogatory #2

Please provide the following information relating to the determination of Mrs. Biner's eligibility for benefits:

(a) The date of her retirement;

A. Mrs. Biner was found entitled to benefits effective November 1970 based on her date of birth, November 20, 1905. She was paid no benefits until she notified the Seattle office in November 1972 that she would not earn over $1,680 in 1972.

(b) How the Social Security Administration was advised of this date.

[Include any writing in Mrs. Biner's files which relates to your answer.]

A. This notification was done by telephone.

(c) The date she became entitled to benefits;

A. Mrs. Biner was found entitled to benefits effective November 1970. She was actually paid benefits for months beginning in January 1972.

(d) How this date was determined;

A. Sections 203(b) and (f) of the Social Security Act (42 U.S.C. 403(b) and (f)) provide for deductions from payment of benefits on account of work after the date of entitlement. In 1972, those sections provided that no deductions on account of work were applicable if a beneficiary earned less than $1,680 in the year. Mrs. Biner

notified the Seattle district office in November 1972 that she would not earn over $1,680 in 1972.

(e) The amount of her first check;

A. $1,809.

(f) How this amount was determined;

A. Mrs. Biner's monthly benefit rate effective January 1972 was $174.50 and effective September 1972 it was $209.40. Since she stated she was not earning over $1,680 in 1972, she was paid for 8 months at $174.50 and 2 months at $209.40 in this first check. This totals $1,814.80, and $5.80 was withheld for her premium payment for supplementary medical insurance.

(g) Who made that determination;

A. This determination was made by the Western Program Center in San Francisco, California.

(h) The amount of her regularly monthly benefits; and

A. Mrs. Biner's original benefit amount effective November 1970 was $132.30 based on her earnings through 1969, using her 11 highest years of earnings. Because of general increases and amendments to the Act and because Mrs. Biner had additional earnings her monthly benefit amount has been increased accordingly. Her present full monthly benefit amount before payment of medical premiums is $250.30 (including a general 7 percent increase in benefits first reflected in checks received in April 1974).

(i) How that amount was determined.

A. See (h) above.

Interrogatory #3

Please provide copies of all reports, forms and other written statements submitted by Mrs. Biner to the Social Security Administration which were not furnished as part of your answer to Interrogatories #1 and #2.

A. None.

Interrogatory #4

Please indicate whether or not Mrs. Biner was requested to submit such reports, forms, and writings, and, if so, for what purpose.

A. Please see item 16 on Exhibit A. A booklet was also mailed to Mrs. Biner with her Certificate of Social Insurance Award. See Exhibit C. Note particularly the explanation "How Earnings From Work Affect Benefits" beginning on page 10 and "Returning Benefit Checks Not Due" on page 31. Exhibit D is the back of the notice sent to a beneficiary with the explanation of her first check. Exhibit E is the front of the notice sent to explain the reason for starting payments of benefits.

Interrogatory #5

Please state the amount of monthly benefits to which Mrs. Biner was entitled, but for the adjustment, for each month beginning with January, 1973, and up to and including March, 1974.

A. Beginning January 1973, Mrs. Biner's monthly benefit rate was $234.20 minus $6.30 for medical insurance premium, or $227.90. Effective for the month of March 1974 (checks received April 3, 1974), there was a general 7 percent increase in benefits and Mrs. Biner's benefits were raised to $250.30.

Interrogatory #6

Please state the amount she actually received for each of those months.

A. Our records indicate Mrs. Biner was paid $177.90 for each month January 1973-February 1974 and should have received $194 for March 1974.

Interrogatory #7

What is the basis for the alleged overpayment to Mrs. Biner? In your answer please state with as much detail and specificity as possible the process by which this determination was made. Please attach any and all documents which relate to this determination. Your answer should include the date on which that determination was made.

A. The overpayment to Mrs. Biner was discovered when it was learned through a report by her employer to the Bureau of Data Processing of the Social Security Administration that she had earned $7,257.34 in 1972. The possibility of additional earnings, earnings in excess of the $1,680 she had previously reported as earning in 1972, was learned by the Western Program Center when they received a notice from the Bureau of Data Processing dated June 27, 1973, that Mrs. Biner was entitled to an increase in her benefits beginning January 1973 based on "Delayed Retirement Credits". Because Mrs. Biner had not filed an annual report of earnings as required by item 16 in Exhibit A and page 14 of Exhibit C, one was solicited from her. She completed it August 28, 1973 (see Exhibit B) and reported that she had, in fact, earned $7,257.34 in 1972, and had earned over $140 in each month of 1972. It was then determined that Mrs. Biner had been overpaid $2,233.60 in 1972. The basis for this determination are the provisions in sections 203(b) and (f) of the Social Security Act (42 U.S.C. 403(b) and (f)). These provisions are explained in Regulations No. 4, sections 404.415, 404.416, and 404.434-404.437. Procedures to be followed in administering the work retirement test are contained in Claims Manual section 5100ff.

Interrogatory #8

Please provide the following information relating to the notice of overpayment given to Mrs. Biner:

(a) The date such notice was sent to Mrs. Biner;

A. September 21, 1973.

(b) The name of the person who prepared the notice;

A. See answer to Interrogatory #1(b).

(c) A copy of the notice; and

A. See "Exhibit A" attached to the complaint.

(d) The reason or reasons why Mrs. Biner was not given more advance notice, i.e. 30 or even 60 days.

A. Mrs. Biner was not provided advance notice because prior to January 1974 an annual report submitted by the beneficiary was an exception to the policy that adjustment of an overpayment would be deferred at least 30 days to give the overpaid beneficiary reasonable opportunity to contest the accuracy of the determination of overpayment or to establish that a basis exists for waiver of adjustment or partial adjustment. (Claims Manual sections T5105, 5503.3.)

Interrogatory #9

What opportunity was afforded Mrs. Biner to contest the determination that an overpayment had occurred, prior to the adjustment of her October, 1973, benefits?

A. See the first paragraph of "Exhibit A-1" attached to the complaint. It reads:

> "If you believe this determination is not correct, you may request that your claim be reexamined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request."

Interrogatory #10

42 U.S.C. § 404(b) reads as follows:

> (b) In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

Please state:

(a) Who made the determination that Mrs. Biner was at fault;

A. See answer to Interrogatory #1(b).

(b) When that determination was made;

A. November 19, 1973.

(c) What "fault" Mrs. Biner committed;

A. Mrs. Biner accepted three checks representing payment of benefits for 1972. She had not been paid for any months beginning November 1970 because of her work and earnings and should have known that her 1972 work and earnings also precluded payment. She should have questioned issuance of these checks particularly since she indicates that she had not requested the payments but had requested payments beginning January 1973 based on her retirement in December 1972. (Regulations No. 4, 404.507 and 404.511(a) and CM 5541, 5547.1-5547.4.)

(d) What opportunity was afforded Mrs. Biner to present evidence and testimony on the issue of "fault" prior to the "adjustment"; and

A. None because prior to January 1974 such opportunity was not available in situations where adjustment was the consequence of an annual report of earnings submitted by the beneficiary.

(e) The source(s) of defendants' definition of "fault". [Please attach copies of any applicable regulations, claims manual provisions, memoranda, or other documents.]

A. See Exhibit F.

Interrogatory #11

Again referring to 42 U.S.C. § 404(b), please state:

(a) Who made the determination that the adjustment [total suspension] of Mrs. Biner's benefits would not defeat the purposes of the Social Security Act;

A. Since Mrs. Biner was found at fault, waiver of adjustment was not possible. Therefore, a determination that adjustment would not defeat the purposes of the Social Security Act was not necessary (CM 5541).

(b) When that determination was made;

A. See (a) above.

(c) Prior to the adjustment, what opportunity was afforded Mrs. Biner to contest the finding that the "adjustment" did not defeat the purposes of the Act; and

A. See answer to Interrogatory #10(d).

(d) The sources(s) of defendant's definition of "defeat the purposes of this subchapter". [Please attach copies of any applicable regulations, claims manual provisions, memoranda, or other documents.]

A. See Exhibit G.

Interrogatory #12

Again referring to 42 U.S.C. § 404(b), please state:

(a) Who determined that the "adjustment" of Mrs. Biner's benefits was not "against equity and good conscience";

A. Since Mrs. Biner was found at fault, waiver of adjustment was not possible. Therefore, a determination that adjustment would not be against equity and good conscience was not necessary (CM section 5541).

(b) The date that determination was made;

A. See (a) above.

(c) Prior to the adjustment, what opportunity was afforded Mrs. Biner to contest the finding that the "adjustment" was not against equity and good conscience; and

A. See answer to Interrogatory #10(d).

(d) The source(s) of defendant's definition of "against equity and good conscience." [Please attach copies of any applicable regulations, claims manual provisions, memoranda, or other documents.]

A. See Exhibit G.

Interrogatory #13

Please provide the following information with regard to Mrs. Biner's request for reconsideration of the overpayment decision:

(a) The date such request was made;

A. November 28, 1973, and December 17, 1973.

(b) The name and title of the person who makes the decision on her request;

A. Please see answer to Interrogatory #1(b).

(c) The reason or reasons why Mrs. Biner has not been notified of a decision on her request; and

A. Notice that upon redetermination the denial of waiver of adjustment of the overpayment was affirmed was sent to Mrs. Biner (and a copy to Mr. Spence) on April 8, 1974.

(d) Copies of all the papers in Mrs. Biner's files relating to her request for said reconsideration.

A. See Exhibits H and I.

Interrogatory #14

Please provide the following information with regard to Mrs. Biner's request for a reconsideration of the decision to suspend "only" $50.00 of her benefits per month:

(a) The date such request was made;

A. Mrs. Biner has contended that there was no overpayment (and thus there should be no adjustment) in her requests for reconsideration of November 28, 1973 and December 14, 1973, but has not specifically disputed the rate of adjustment. Although the determination denying waiver of adjustment of an overpayment represents an initial determination which a beneficiary may request reconsideration of (CM section 7105.3(1)), the method of recovery (or rate of adjustment) is not such an initial determination. (CM sections 5519(b) and 7105.5 and (c)).

(b) The name and title of the person who makes the decision on her request;

A. See answer to Interrogatory #1(b).

(c) The reason or reasons why Mrs. Biner has not been notified of a decision on her request;

A. See (a) above.

(d) Copies of all the papers in Mrs. Biner's files relating to her request for said reconsideration; and

A. Not applicable.

(e) The basis for this decision, i.e., why $50.00 rather than $10.00 or $150.00.

A. Where an individual is at fault in causing an overpayment, partial adjustment must be set at a rate which will allow recoupment of the overpayment within a 36-month period (CM section 5517.5). $50 was an approximation. The balance of the overpayment in November 1973, when partial adjustment was initiated, was $1,583.70, and to recoup this amount in a 36-month period required a monthly withholding of at least $43.98 ($44 is the least which could be withheld). Actually where a rate of adjustment has not been suggested by the beneficiary, the withholding may be as much as the beneficiary's full monthly benefit.

Interrogatory #15

Please provide the following information with regard to Mrs. Biner's request for a reconsideration of the decision that she owes money for unpaid medical insurance premiums.

(a) The date such request was made;

A. Mrs. Biner's claims folder does not reflect a request for reconsideration of this issue.

(b) The name and title of the person who makes the decision on her request;

A. Not applicable.

(c) The reason or reasons by Mrs. Biner has not been notified of a decision on her request; and

A. The complaint filed by plaintiff's attorney makes no mention of a request for a reconsideration regarding unpaid medical insurance premiums. Her claims folder does not reflect any actions in this area.

(d) Copies of all papers in Mrs. Biner's files relating to her request for said reconsideration.

A. None.

Interrogatory #16

Claims Manual section 5503.5 provides in its pertinent part that:

> Where action has already been taken to recoup on overpayment, i.e., §§ 5503.3(1) or (2) above, or where the beneficiary did not respond until after the deferral period, if the beneficiary requests either waiver, partial adjustment, or reconsideration of the overpayment determination and benefits are otherwise payable, the DO will immediately notify the reviewing office by means of Form SSA-2521 to initiate payment of benefits effective with the current operating month until such time as the issue has been resolved.

Please state:

(a) The date the DO notified the reviewing office by means of Form SSA-2521 on behalf of Mrs. Biner;

A. The instructions in CM section 5503.5 were not followed. The DO inadvertently did not use form SSA-2521.

(b) Why Mrs. Biner's benefits have not been restored pending the resolution of the disputed issues.

A. Reviewing office failed to restore the full benefit when request for reconsideration was received since the procedures in CM section 5503.5 were not followed. However the determination to adjust was affirmed on reconsideration. Therefore a restoration of benefits pending reconsideration would have resulted in an increased overpayment to Mrs. Biner. Restoration of the full monthly benefit would not be appropriate at this time.

NOTE: There are two Interrogatories number 16. The first one referred to Mrs. Biner. The following #16 refers to Mrs. Buffington.

Interrogatory #16

With regard to Mrs. Fannie Buffington please state the amount of Social Security benefits she was entitled to receive (without considering any overpayment adjustments) for the months of September, October, November, and December, 1973, and January, 1974.

A. For each of the months of September 1973, October 1973, November 1973, December 1973, and January 1974, Mrs. Buffington was entitled to a benefit amount of $96.20. After her monthly medical insurance premium of $6.30 was withheld, the amount due would be $89.90.

Interrogatory #17

Please state the amounts she actually received for those months.

A. Mrs. Buffington was paid benefits *for* the months of September 1973 through January 1974 as follows:

09/73—$89.90 (pair about October 3, 1973)

10/73— 11.30 (paid about November 3, 1973)

11/73— 89.90 (paid about December 3, 1973)

12/73— 89.90 (paid about January 3, 1974)

01/74— 89.90 (paid about February 3, 1974)

Interrogatory #18

If there is any discrepancy for any of the months in question please explain such discrepancy.

A. An overpayment of $78.60 was withheld from Mrs. Buffington's benefit amount of $89.90 for October 1973. She received payment of $11.30 for October 1973 about November 3, 1973.

Interrogatory #19

How was Mrs. Buffington's September, 1973, benefit level established?

A. For September 1973, Mrs. Buffington was entitled to a retirement insurance benefit of $80.50 and a wife's benefit of $15.70 or a combined benefit of $96.20. Her medical insurance premium of $6.30 reduced the benefit payment to $89.90.

Interrogatory #20

What is the basis for the alleged overpayment to Mrs. Buffington? In your answer please state with as much detail and specificity as possible the process by which this determination was made. Please attach any and all documents which relate to this determination. Your answer should include the date on which that determination was made.

A. Mr. Buffington filed an annual earnings report for 1972 on September 4, 1973. It showed yearly earnings of $3,240 for 1972 and wages over $140 a month for January through September of that year. Based on these earnings and services, Mr. Buffington's retirement insurance benefit was subject to a deduction of $134.70 a month for January 1972 through June 1972, and $73.20 for July 1972. In addition, Mrs. Buffington's wife's benefit was subject to a deduction of $13.10 a month for January 1972 through June 1972. As a result of these deductions, Mr. Buffington was overpaid $881.40 and Mrs. Buffington was overpaid $78.60. The determination of overpayment was made on September 22, 1973.

NOTE: Pages 17 and 18 of the Interrogatories from the plaintiff repeat the use of the numbers 19 and 20.

Interrogatory #19

Please provide the following information relating to the notice of overpayment given to Mrs. Buffington:

(a) The date such notice was sent to Mrs. Buffington;

A. Notice of overpayment was mailed to Mrs. Buffington on October 3, 1973. The notice indicated the overpayment would be withheld from her next benefit (October 1973 benefit) payable about November 3, 1973.

(b) The name of the person who prepared the notice;

A. See answer to Interrogatory #1 (b).

(c) A copy of the notice; and

A. See "Exhibit C-1" attached to complaint.

(d) The reason or reasons why Mrs. Buffington was not given more advance notice, i.e., 30 or even 60 days.

A. Prior to January 1974 (Transmittal Sheet No. 3156, sections T5101-T5105) an annual report of earnings submitted by the beneficiary was an exception to the policy that adjustment of an overpayment would be deferred at least 30 days to give the overpaid beneficiary reasonable opportunity to contest the accuracy of the determination of overpayment or to establish that a basis existed for waiver of adjustment or partial adjustment. Mrs. Buffington was nevertheless given approximately 30 days notice of the proposed overpayment adjustment and thus, even though the new procedures were not yet promulgated, was afforded the same advance notice now provided for by these procedures.

Interrogatory #20

What opportunity was afforded Mrs. Buffington to contest the determination that an overpayment had occurred prior to the adjustment of her November, 1973, benefits?

A. Mrs. Buffington was given approximately 27 days notice (via notice of overpayment dated October 3, 1973) that the overpayment would be withheld from her October 1973 benefit that she should have received about November 3, 1973.

Interrogatory #21

42 U.S.C. § 404(b) reads as follows:

> (b) In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

Please state:

(a) Who made the determination that Mrs. Buffington was at fault;

A. Mrs. Buffington did not request consideration of waiver of recovery of the overpayment of $78.60. Consequently, a determination was not made as to whether or not she was at fault in causing the overpayment.

(b) When that determination was made;

A. Not applicable. See (a) above.

(c) What "fault" Mrs. Buffington committed;

A. Not applicable. See (a) above.

(d) What opportunity was afforded Mrs. Buffington to present evidence and testimony on the issue of "fault" prior to the "adjustment".

A. The claims record indicates that on October 10, 1973, Mrs. Buffington asked the Seattle, Washington, Social Security Office for an explanation of the overpayment. Evidence and testimony on the issue of "fault" has not been presented.

(e) The source(s) of defendants' definition of "fault". [Please attach copies of any applicable regulations, claims manual provisions, memoranda, or other documents.]

A. Not applicable. See (a) and (d) above.

Interrogatory #22

Again referring to 42 U.S.C. § 404(b), please state:

(a) Who made the determination that the adjustment [total suspension] of Mrs. Buffington's benefits would not defeat the purposes of the Social Security Act;

A. A determination was not made as to whether or not adjustment of Mrs. Buffington's overpayment would

defeat the purpose of title II of the Social Security Act. Consideration of waiver of adjustment of the overpayment was not requested.

(b) When that determination was made;

A. Not applicable. See (a) above.

(c) Prior to the adjustment, what opportunity was afforded Mrs. Buffington to contest the finding that the "adjustment" did not defeat the purposes of the Act; and

A. On October 10, 1973, Mrs. Buffington asked the Seattle, Washington, Social Security Office for an explanation of the overpayment. Evidence and testimony on the issue of "defeat the purpose of title II" has not been presented.

(d) The source(s) of defendant's definition of "defeat the purposes of this subchapter." [Please attach copies of any applicable regulations, claims manual provisions, memoranda, or other documents.]

A. Not applicable. See (a) and (c) above.

Interrogatory #23

Again referring to 42 U.S.C. § 404(b), please state:

(a) Who determined that the "adjustment" of Mrs. Buffington's benefits was not "against equity and good conscience;"

A. A determination was not made as to whether or not adjustment of Mrs. Buffington's overpayment would be against equity and good conscience. Consideration of waiver of recovery of the overpayment was not requested.

(b) The date that determination was made;

A. Not applicable. See (a) above.

(c) Prior to the adjustment, what opportunity was afforded Mrs. Buffington to contest the finding that the "adjustment" was not against equity and good conscience; and

A. On October 10, 1973, Mrs. Buffington asked the Seattle, Washington, Social Security Office for an explanation

of the overpayment. Evidence and testimony on the issue of "against equity and good conscience" has not been presented.

(d) The source(s) of defendant's definition of "against equity and good conscience." [Please attach copies of any applicable regulations, claims manual provisions, memoranda, or other documents.]

A. Not applicable. See (a) and (c) above.

/s/ Russell F. Davis
RUSSELL F. DAVIS
Executive Officer
Bureau of Retirement and
Survivors Insurance

Subscribed and sworn to before me
this 17th day of April, 1974.

/s/ Dorothy H. Lamont
Notary Public
My Commission expires July 1, 1974

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration

[TELECLAIM] UNIT 33

Form Approved.
Budget Bureau No. 72-R0123.

APPLICATION FOR RETIREMENT INSURANCE BENEFITS*

*Provided by Section 202(a) of the Social Security Act, as amended

(Do not write in this space)

If you are awarded monthly benefits based on this application, you will be automatically entitled at age 65 to hospital insurance protection. In addition, this application form may be used for enrollment in the Supplementary Medical Insurance Benefits Plan.

OCT 15 1970

NOTICE—Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act is subject to not more than a $1,000 fine or 1 year of imprisonment, or both.

I hereby apply for entitlement to all insurance benefits which may be payable to me under Title II and Part A of Title XVIII of the Social Security Act, as amended.

1 Enter Your Full Name: FRANCES S BINER

☐ Male ☒ Female

Enter your Social Security Number: 538 | 18 | 4795

2 Enter your date of birth (*Show month, day, and year*): 11 - 20 - 1905

Enter the name of the State or foreign country where you were born: CLEVELAND OHIO

3 (a) Check (✓) whether you are:

married less than 30 days

☐ MARRIED (*Whether living together or separated*) ☐ WIDOWED ☒ DIVORCED ☐ SINGLE

(*If you checked "MARRIED" or "WIDOWED," complete (b) and (c).*) (*If you checked "DIVORCED" or "SINGLE" go on to item 4.*)

(b) Enter your wife's maiden name or your husband's name	Date of birth (*If unknown, give age*)	Date of marriage	Your wife's or your husband's Social Security Number (*If none or unknown, so indicate*)

(c) If your husband or wife is deceased, enter the date of death here → Date of death

4 Your unmarried children (*including natural children, adopted children, and stepchildren*) may be eligible for benefits based on your earnings record, if they are, or have been in the past 12 months:

- under age 18, or
- age 18 to 22 and attending school, or
- age 18 or over and under a disability (*which must have begun before age 18*)

How many children do you have who may be eligible for benefits? → Number of children (*if none, write "None"*): none

5 (a) Have you ever before filed an application with the Social Security Administration for monthly benefits or for hospital or medical insurance?

☐ YES (*If "Yes," answer (b) and (c)*) ☒ NO (*If "No," go on to item 6*)

(b) Enter name of person on whose earnings record you filed other application(s)	(c) Enter Social Security Number of person named in (b) (*If unknown, so indicate*)

FORM SSA-1 (6-68) (OVER)

Exhibit A - Page 1

240-241

6 (a) Are you now or have you been for any period in the past 14 months unable to work because of a disabling condition?

☐ YES *(If "Yes," answer (b))* ☒ NO *(If "No," go on to item 7)*

(b) Enter date on which your disabling condition began → | Month, day, year

7 (a) Were you in the active military or naval service after September 7, 1939?

☐ YES *(If "Yes," answer (b) and (c))* ☒ NO *(If "No," omit (b), (c), and (d) and go on to item 8)*

(b) Enter name of branch (Army, Navy, etc.), country served (if other than U.S.), and dates of service

(c) Have you received, or do you expect to receive, a benefit from any other Federal agency?

☐ YES *(If "Yes," answer (d))* ☐ NO *(If "No," omit (d) and go on to item 8)*

(d) List all such agencies:

8 Did you work in the railroad industry any time on or after January 1, 1937?

☐ YES ☒ NO

9
- Enter below the names and addresses of all the persons, companies, or Government agencies for whom you worked during the last 12 months.
- If you worked in agricultural employment, give this information for this year and last year.
- If you were not an employee this year or last year, write "None" below and go on to item 11.

Name and address of employer *(If you had more than one employer, please list them in order beginning with your last (most recent) employer)*	Work began		Work ended *(If still working show "Not Ended")*	
	Month	Year	Month	Year
AMERICAN BUILDING MAINTENANCE. 1711 SO. JACKSON ST SEATTLE WASH	5	67	NOT ENDED	
(Use "Remarks" space for information about any other employers.)				

10 May we ask your employers for wage information needed to process your claim?

☒ YES ☐ NO

11 (a) Were you self-employed this year, last year, or the year before?

☐ YES *(If "Yes," answer (b))* ☒ NO *(If "No," skip to item 12)*

(b) Check the year or years in which you were self-employed	In what kind of trade or business were you self-employed?	Were your net earnings from your trade or business $400 or more? *(Check "Yes" or "No")*
☐ This year		
☐ Last year		☐ YES ☐ NO
☐ Year before last		☐ YES ☐ NO

Exhibit A - Page 2

Please read the following information before going on to items 12, 13, and 14.

Some or all of your benefits are not payable if, while under age 72, you work for more than the monthly limit in employment (as defined below) or perform substantial services in self-employment in any month, and have earnings in excess of the exempt amount (as defined below) for the taxable year.* This applies to all employment and self-employment, whether or not covered by the Social Security Act.

The *monthly limit* is $125 per month for months in a taxable year ending prior to 1968 and $140 per month for any taxable year ending after 1967. If the taxable year is a calendar year, the $140 amount is effective January 1968.

The *exempt amount* of total earnings which a beneficiary may have without deduction from benefits is $1,500 per year for a taxable year which ends before 1968. It is $1,680 per year for taxable years ending after 1967. If the taxable year is a calendar year, $1,680 is the exempt amount beginning 1968.

As an employee, you count the gross wages (not the take-home pay) you earn during the year, regardless of when the wages are paid to you. As a self-employed person, you count the net earnings from your business (after deducting allowable business expenses).

12 (a) How much were your total earnings last year? . . . . . $ About 6200.

If the total in (a) is over the exempt amount, answer (b). If less, omit (b) and (c) and go on to item 13.

(b) Did you earn more than the monthly limit in employment or perform substantial services in self-employment in each month of last year?

☒ YES (*If "Yes," omit (c)*) ☐ NO (*If "No," answer (c)*)

(c) Circle each month of *last year* in which you did not earn more than the monthly limit in employment *and* did not perform substantial services in self-employment.

Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

13 (a) How much do you expect your total earnings to be this year? (Count all of your earnings beginning with the first of this year and all expected earnings through the end of this year.) . . . . . $ About 6500.

If the total in (a) is over the exempt amount, answer (b). If less, omit (b), (c), and item 14.

(b) Have you earned more than the monthly limit in employment or performed substantial services in self-employment in each of the months of this year including the present month?

☒ YES (*If "Yes," omit (c)*) ☐ NO (*If "No," answer (c)*)

(c) Circle each month of *this year* including the present month in which you did not earn more than the monthly limit in employment *and* did not perform substantial services in self-employment.

Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

14 (a) Do you expect to earn more than the monthly limit in employment or perform substantial services in self-employment in each of the next 3 months?

☒ YES (*If "Yes," omit (b)*) ☐ NO (*If "No," answer (b)*)

(b) List each of the next 3 months in which you do not expect to earn more than the monthly limit in employment *and* do not expect to perform substantial services in self-employment. . . . . .

Answer item 15 if you are now in the last 3 months of your taxable year (Oct., Nov., and Dec. if your taxable year is a calendar year).

15 How much do you expect your total earnings to be next year? . . . . . $ About 6500.

An annual report of earnings must be filed with the Social Security Administration within 3 months and 15 days after the end of any year in which you earned more than the exempt amount, if you were under age 72 at least 1 full month of that year and received some benefit payment for such a month. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ONE OR MORE MONTHLY BENEFITS.

16 Do you agree to file the annual report of earnings when required? ☒ YES ☐ NO

17 This application for retirement benefits may be retroactive for as many as 12 months from the date it is filed but not for any month before you reached age 62. *If you are between age 62 and age 66,* your application may be for benefits payable at a reduced rate. They will continue at a reduced rate even after you reach age 65.

If there are any months before you reach age 65 for which you do not wish to claim benefits, enter the months and give your reason All Months — Work & Earnings

* The yearly period referred to in this and following items is the same 12-month period you use in figuring your income tax. If you use a fiscal year, that is, a taxable year that does not end December 31 (with income tax return due April 15), enter here the month your fiscal year ends. | Month

Exhibit A (OVER) Page 3

Answer item 18 only if you are a married woman.

18 Is your husband receiving at least one-half of his support from you? ☐ YES ☐ NO

Answer item 19 only if you are married and your husband or wife is applying for benefits.

19 (a) Check (√) whether your marriage was performed by:

Clergyman or authorized public official ☐, or Other ☐ ..... (Explain)

(b) Were you married before your present marriage? ☐ YES ☐ NO

(If "Yes," give the following information about each of your previous marriages.)

Previous marriage	To whom married	When (*Mo., day, and year*)	Where (*Enter name of city and State*)
	How marriage ended	When (*Mo., day, and year*)	Where (*Enter name of city and State*)
Previous marriage	To whom married	When (*Mo., day, and year*)	Where (*Enter name of city and State*)
	How marriage ended	When (*Mo., day, and year*)	Where (*Enter name of city and State*)

(Use "Remarks" space for information about any other marriage)

Remarks: IS THERE A PUBLIC OR CHURCH RECORD OF BIRTH OR BAPTISM ESTABLISHED BEFORE AGE 5? YES ✓ NO ____ my BIRTH CERTIFICATE LISTS MY NAME AS FRANCIS

Knowing that anyone making a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law, I certify that the above statements are true.

If this application (and, if relevant, the enrollment question below) has been signed by mark (X), two witnesses who know the applicant must sign below, giving their full addresses.

Signature (*Write in ink*)

Sign Here ▷ (X) Frances S. Burns

1. Name

Address (*Number and street, city, State, and ZIP Code*)

Mailing address (*Number and street, P.O. box, or rural route*) 3015 E. CHERRY ST

2. Name

City and State SEATTLE WASH

ZIP Code 98122

Address (*Number and street, city, State, and ZIP Code*)

Date (*Mo., day, and year*)

Telephone number EA5-6015

Enter name of county (*if any*) in which you now live KING.

Answer the question below only if you are now AGE 65 or older, or you will reach AGE 65 in this month or one of the next 3 months.

ENROLLMENT IN THE SUPPLEMENTARY MEDICAL INSURANCE BENEFITS PLAN

Your social security district office will be glad to explain this plan and to give you a leaflet containing information on the physicians' and surgeons' services and other medical services covered, premium amounts, enrollment periods, etc. A request for enrollment cannot be effective unless it is made within one of the enrollment periods specified in the law. If you do not enroll within your initial enrollment period, you may have to pay a higher premium and your coverage will be delayed.

Do you wish to enroll in the supplementary medical insurance benefits plan? (Premium payments will be due. Where possible, these payments will be deducted from your monthly benefit check.)

X YES ☐ NO ☐ Undecided ☐ Currently enrolled

Sign below regarding medical insurance benefits plan.

Sign Here ▷ (X) Frances S. Burns

U.S. GOVERNMENT PRINTING OFFICE : 1958 O - 500-435

Exhibit A - Page 4

SOCIAL SECURITY ADMINISTRATION

Form Approved OMB No. 72-R0524

ANNUAL REPORT OF EARNINGS—1972

Please read enclosed INSTRUCTION leaflet carefully.

1972

NOTICE: Whoever makes a false statement in connection with this report is liable to a fine or imprisonment or both.

PRINT NAME AND ADDRESS BELOW IF NOT ALREADY SHOWN, THEN ANSWER QUESTIONS ON OTHER SIDE.

Frances S. Biner
3015 E Cherry
Seattle, WA 98122

4 Answer only if you answered item 2b on other side. Show what work you did in connection with your business during each month for which you made an entry in item 2b. (Also explain if ownership of your business changed)

MONTHS	Hours of work	KIND OF BUSINESS

Please do not bend, pin or tear this card

Exhibit B Page 1.

PLEASE READ INSTRUCTIONAL LEAFLET WHEN COMPLETING THIS FORM

1 WERE YOU AN EMPLOYEE IN 1972?
[X] YES (If "yes" complete a & b)
[ ] NO

a. Show amount of wages earned from January 1, 1972 through December 31, 1972 (gross wages before payroll deductions) ..... $ 7257.34

b. Place "X" in box for each month in which you did NOT earn more than $ 140

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	2	3	4	5	6	7	8	9	10	11	12

2 WERE YOU SELF-EMPLOYED IN 1972?
[ ] YES (If "yes" complete a and b)
[X] NO

a. Show 1972 net earnings (or loss) from self-employment (if a loss, write "L" after the amount) ..... $ [illegible]
(See guides on page 4 of instructional leaflet for completing this item)

b. Place "X" in box for each month in which you believe you did NOT perform substantial services in your business and complete item 4 on the other side.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	2	3	4	5	6	7	8	9	10	11	12

3 EARNINGS ESTIMATE FOR 1973

a. Do you expect to earn more than $ 2,100 in 1973? (If yes, complete both (b) and (c).) — CHECK ONE: [ ] Yes [X] No

b. Show amount you expect to earn in 1973 ..... $ [illegible]

c. Show the first month of 1973 in which you earned over $ 175 in wages OR performed substantial services in self employment (If no month show "None") ..... Month

DATE AND SIGN ▷ DATE 12/28/73 | SIGNATURE | SOCIAL SECURITY CLAIM NUMBER 538 15 4795 | LETTER A | TELEPHONE NO. 355-6015

SSA-107H (12-72)

Department of Health, Education and Welfare
Social Security Administration

DETERMINATION OF BENEFIT ADJUSTMENT FOR WORK NOTICES AND ANNUAL REPORTS

The following determination is based on supporting evidence on file and certification of payment is recommended as follows:

CAN	DATE	PC	RJN	NEW ABN	OLD ABN
538-18-4795A	11/15/72	SF	X15	3153	4268

NAME AND ADDRESS
FRANCES S BINER
3015 E CHERRY ST
SEATTLE WA 98122

GROUP	DR. EFF. MO.	CR. EFF. MO.	UPDATE MO
		11/72	12/72

O.O. CODE	TRANSMISSION CYCLE	SPECIAL ACTION CODE	EDP LTR
916	K14		

REASON FOR ACTION: WORK NOTICE A

TYPE OF ACTION: REINSTATEMENT

PAYMENT RECORD DATA

PIC	PAYMENT STATUS	PREMIUM STATUS		PREM. COLL. BY		MO. PAYMENT	PIA	MAXIMUM	OUTSTANDING PAYMENT DATA
A	COND.					203.60	209.40	361.20	

CURRENT NOTICE DATA

Event 1				Event 2			
CURR. WK. CODE	EFF. DATE	EARNINGS	NON-WORK MONTHS	CURR. WK. CODE	EFF. DATE	EARNINGS	DIARY DATE
WK	01/72	7201680		NW	01/73	7301680	

PRIOR YEAR OVERPAID MOS.	CURRENT YEAR OVERPAID MOS	AR REFUND DATA	DATE OF RET ISSUE	CHECK NUMBER	CHECK AMOUNT

ADDITIONAL PROCESSING DATA

72 EA NONE 72 A/W 1814.80

ADDITIONAL PAYMENT INFORMATION	EFF. MONTH	NET AMOUNT DUE	PAID THRU	MONTHLY RATE
BASED ON YOUR REPORT, YOU WILL RECEIVE BENEFITS AS INDICATED, SEE REVERSE SIDE	09/72	1809.00	10/72	203.60

ADJUSTED HISTORY RECORD

PIC	PAYMENT STATUS	PREMIUM STATUS		PMA	CMA	MO. PAYMENT	PIA	MAXIMUM	OUTSTANDING PAYMENT DATA
A	CURRENT	5.80		X	X	203.60	209.40	361.20	DUE 1809.00 10/72

BIC	PERIOD	RATE	POSTING	PERIOD	RATE	POSTING	PERIOD	RATE	POSTING
A	01/72	174.50	PD	09/72	209.40	PD			

REMARKS

A 203.60

SECOND EVENT DIARY DELETED

Exhibit E

REVIEWER'S ACTION | APPROVED BY BENEFIT AUTHORIZER | DATE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 72-R0054

REQUEST FOR RECONSIDERATION

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON	SOCIAL SECURITY CLAIM NUMBER
Frances S. Biner	538-18-4795-A

NAME OF CLAIMANT (If different from person named above.)

CLAIM FOR (Specify type, e.g., retirement, disability, hospital insurance, etc.)
Retirement

RECEIVED
NOV 29 1973
91576
SSA DISTRICT OFFICE

I do not agree with the determination made on the above claim and request reconsideration.

My reasons are:
I do not believe there was any overpayment.

NOTE: If the date of the notice of the determination on this claim was more than six months ago include your reason for not making this request earlier.

I am submitting the following additional evidence (If none, write "None."):
None

Signature (First name, middle initial, last name) (Write in ink)
SIGN HERE ▷ Frances S. Biner

Date (Month, day, year)
11-27-73

Telephone Number
325-6015

Mailing Address (Number and street, Apt. No., P.O. Box, or Rural Route)
3015 E. Cherry St

City and State
Seattle, Wash

ZIP Code
98122

Enter Name of County (if any) in which you now live
King

Witnesses are required ONLY if this request has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the person requesting reconsideration must sign below, giving their full addresses.

1. Signature of Witness	2. Signature of Witness
Address (Number and street, City, State, ZIP Code)	Address (Number and street, City, State, ZIP Code)

FOR SOCIAL SECURITY OFFICE USE ONLY

PROVIDER NAME AND NUMBER (City and State)	INTERMEDIARY NAME AND NUMBER (City and State)	SOCIAL SECURITY OFFICE ADDRESS
		6 1 9 5015 12/13/73

ROUTING INSTRUCTIONS (Check one)

- ☐ State Agency (Route with disability folder)
- ☐ Payment Center _____ BDI, Balto. ☐
- ☐ _____ Intermediary ☐ DRB, Balto.
- ☐ Division of Foreign Claims, Balto.
- ☐ BDPA, Attn: CWAB, Balto.
- ☐ _____ RO (Emergency)

FORM SSA-561 (4-71) NOTE: Take or mail completed copies to your Social Security Office.

Exhibit H

EXHIBIT D

[SEAL]

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
Baltimore, Maryland 21235

April 8, 1974

REFER TO:

IRI-421
538-18-4795

Mrs. Frances S. Biner
3015 East Cherry Street
Seattle, Washington 98122

Dear Mrs. Biner:

This refers to your request for reconsideration of the determination to adjust the overpayment of $2,233.60 against benefits due you.

Payment based on the claim for retirement benefits you filed in October 1970 was not made because you continued to work and earn over the allowable amount. In November 1972 you contacted the social security office to request payment of your retirement benefits based on a change in your work situation. Although you reported that you would retire in December 1972, your report was processed showing an estimate of $1,680 for 1972. Consequently, payment was made for all months of 1972 rather than beginning with the January 1973 monthly benefit.

At the Administration's request you filed in August 1973 an annual report of earnings for 1972. Based on your reported work and earnings of $7,257 benefits were not payable for 1972, and you were advised that you had been overpaid $2,233.60.

Section 204 of the Social Security Act provides that there shall be no adjustment or recovery of an overpayment

when the person liable for repayment is without fault *and* adjustment or recovery would deprive the person of income for ordinary and necessary living expenses or would be unfair for some other reason. Both conditions must be met. Although the individual against whom adjustment is considered may need substantially all current monthly benefits to meet current and necessary living expenses, adjustment of the overpayment against current monthly benefits is required unless the individual is also without fault in causing the overpayment.

From our review of your record we are unable to find you without fault in causing the overpayment. Although the Administration may have erred in the processing of the report you made in November 1972, you should have been aware that benefits were not payable for months in which you were regularly employed. It was because of your work that you had not previously received benefits. When you reported that you were retiring in December 1972, you should have known that benefits were not due for months prior to January 1973. Yet, while you were still working, you received three checks representing payment of benefits for months before 1973.

The first check represented payment for January 1972 through October 1972, and the second and third checks represented payment for November 1972 and December 1972 respectively. The large retroactive payment of $1,809 representing benefits through October 1972 should certainly have put you on notice to inquire whether such payment was actually due. Since you accepted all payments without question, you failed to exercise a high degree of care to avoid an overpayment.

That the overpayment may have originated with administrative error, therefore, does not relieve you from establishing that you were without fault in accepting the incorrect payments. Accordingly, we find, based on the evidence on record, that you do not meet the requirements for waiver of adjustment of the overpayment and affirm the overpayment determination and denial of waiver.

If you believe either determination is not correct, you may request a hearing before an administrative law judge of the Bureau of Hearings and Appeals. If you want a hearing, you must request it through any social security office not later than 6 months from the date of this notice.

Sincerely,

/s/ Hugh F. McKenna
HUGH F. MCKENNA
Director
Bureau of Retirement and
Survivors Insurance

cc: Mr. Jeff Spence, Attorney for Plaintiff

EXHIBIT I

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil Action No. 734-73C2

FANNIE BUFFINGTON and FRANCES BINER, individually and on behalf of ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

CASPAR WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education, and Welfare, DEFENDANT

AFFIDAVIT OF JAMES E. FORBUS

BALTIMORE COUNTY)
) ss
STATE OF MARYLAND)

I, James E. Forbus, being duly sworn, depose and say that I am the Deputy Director of the Bureau of Retirement and Survivors Insurance of the Social Security Administration, and as such, am responsible for the formulation of policies and procedures whereby retirement, dependent and survivors' claims under Title II of the Social Security Act are adjudicated. Such responsibilities also include the supervision of the Program Centers of the Social Security Administration in their adjudication of Title II claims. In connection with my official duties, I have legal custody of certain records, documents, and other information established and maintained by the Department of Health, Education, and Welfare, pursuant to Title 42, United States Code, section 405.

The files maintained by the Social Security Administration with respect to Fannie Buffington and Frances

Biner, which have been examined under my direction and supervision, reveal the following:

1. Mrs. Frances Biner filed her application in Seattle, Washington, on October 5, 1970, for retirement insurance benefits. She gave her birthdate as November 20, 1905. Mrs. Biner stated on her application that she did not wish to claim benefits for any months before age 65 because of her earnings.

2. Some or all of retirement insurance benefits were not payable if while under age 72 the claimant worked for more than the monthly limit in employment ($140.00) or performed substantial services in self-employmnet in any month, and had earnings in excess of the exempt amount for the taxable year ($1,680.00). Effective January 1, 1974, this was changed to $200.00 a month and $2400.00 a year.

3. Mrs. Biner listed her income for 1969 as about $6,200.00, for 1970 as about $6,500.00, and for 1971 as about $6,500.00.

4. The application which Mrs. Biner signed October 5, 1970, states: "Annual report of earnings must be filed with the Social Security Administration within three months and fifteen days after the end of any year in which you earned more than the exempt amount, if you were under age 72 at least one month of that year and received some benefit payment for such a month. FAILURE TO REPORT MAY RESULT IN THE LOSS OF ONE OR MORE MONTHLY BENEFITS." Following this is the question: "Do you agree to file the annual report of earnings when required? Mrs. Biner checked the box marked "YES".

5. Mrs. Biner was found entitled to benefits effective November 1970 based on her birthdate. On October 26, 1970, Mrs. Biner was notified that she was entitled to $132.30 per month beginning November 1970, but that she would not receive benefits at that time because of her earnings from work. Mrs. Biner was also sent the booklet, "Rights and Responsibilities of Those Who Receive Social Security Retirement or Survivor Benefits".

6. The rights and responsibilities booklet explains how

earnings from work affect benefits and reiterates the requirement to report earnings. The booklet also states if a benefit check is sent which the recipient knows is not due she must return it. The booklet provides: "To fail to report any occurrence that affects the right to payments, or to make a false statement about it, can lead to a fine or imprisonment, or both. The law also provides for forfeiture of one or more monthly benefits for failure, without good cause, to notify the Social Security Administration of certain occurrences which affect eligibility to payments."

7. Mrs. Biner was paid no benefits until she notified the Seattle office in November 1972 that she was going to stop working and would not earn over $1,680.00 in 1972.

8. Mrs. Biner was paid benefits for months beginning January 1972. In the interim, her monthly benefit was increased. Her first check was for $1,809.00. This figure represents her monthly benefit rate of $174.50 effective January through August, and her monthly benefit rate of $209.40 effective September and October, less $5.80 for supplementary medical insurance.

9. November 22, 1972, a notice was sent to Mrs. Biner explaining her first check. This notice stated that she "should report promptly to any Social Security office any change which will affect payments, such as: a. If you go to work while under age 72 and expect to earn over $1,680.00 in a year." The notice also states: "under social security law, any overpayment must be withheld from benefits or paid back unless *both* of the following are true:

a. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correct, *and*

b. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security benefits; or it would be unfair for some other reason."

10. Mrs. Biner received checks of $203.60 for November and December 1972. This made a total cash

payment of $2,216.20 for the year 1972, and she had been given credit for 3 months Medicare payments, making a total overpayment of $2,233.60.

11. Overpayment to Mrs. Biner was discovered when it was learned through a report by her employer to the Bureau of Data Processing of the Social Security Administration that she had earned $7,257.34 in 1972.

12. Mrs. Biner had not filed an annual report of earnings for 1972 as required so it was solicited from her. She completed the report August 28, 1973, verifying that she had earned $7,257.34 in 1972 and more than $140.00 each month.

13. Mrs. Biner was notified September 21, 1973, of overpayment totaling $2,233.60 ($2,216.20 cash payments plus $17.40 credit for three months' Medicare premium). The notice stated that in order to recover the amount regular monthly benefits would be withheld from September 1973 until July 1974, except that she would receive a partial benefit of $92.90 for July.

14. Mrs. Biner was not provided advance notice relating to overpayment because prior to January 1974 an annual report submitted by the beneficiary was an exception to the Claims Manual provision that adjustment of an overpayment would be deferred at least 30 days to give the overpaid beneficiary reasonable opportunity to contest the accuracy of the determination of overpayment or to establish that a basis exists for waiver of adjustment or partial adjustment.

15. Two letters were written by Mrs. Biner after she was notified of overpayment. She claimed innocence in causing overpayment and inquired about making monthly payments instead of having her benefits withheld from September 1973 through July 1974.

16. What constitutes "fault" on the part of the overpaid individual from whom the Administration seeks to recover depends on whether the facts show that the incorrect payment to the individual resulted from:

"a. An incorrect statement made by the individual which he knew or should have known to be incorrect; or

b. Failure to furnish information which he knew or should have known to be material; or

c. With respect to the overpaid individual only, acceptance of a payment which he either knew or could have been expected to know was incorrect." 20 C.F.R. 404.507.

17. November 19, 1973, Mrs. Biner was notified that a determination had been made that she was at fault but to avoid hardship overpayment would be recovered by withholding $50.00 per month. The letter explained the reasons for this determination and gave the procedure for reconsideration if she felt the decision was incorrect.

18. Mrs. Biner requested reconsideration November 27, 1973.

19. A letter was sent to Mrs. Biner December 14, 1973 explaining how the overpayment would affect her payments. The withholding of $50.00 per month began November 1973.

20. Ordinarily when action is taken to recoup overpayment if the beneficiary requests reconsideration of the overpayment determination the District Office immediately notifies the reviewing office to initiate payment of benefits effective with the current operating month until such time as the issue has been resolved. This was not done. However, the determination to adjust was affirmed on reconsideration so a restoration of benefits pending reconsideration actually would have resulted in increased overpayments.

21. Mrs. Biner was notified April 8, 1974, that upon redetermination the denial of waiver of adjustment of the overpayment was affirmed.

22. Because of additional earnings beyond age 65 Mrs. Biner was given recomputations and delayed retirement credits. The increase due Mrs. Biner from January 1973 to October 1973 was used to reduce the 1972 overpayment to $1,583.70. The remaining overpayment is being recovered by withholding $50.00 per month November 1973 through May 1976 and $33.70 June 1976.

23. Beginning January 1973 Mrs. Biner's monthly benefit rate was $234.20 less $6.30 for medical insurance

premium, or $227.90. Effective March 1974 there was a general seven percent increase in benefits and Mrs. Biner's benefits were raised to $250.30.

24. Mrs. Biner was paid $177.90 per month January and February 1974, $194.40 March, April, and May 1974, and $203.30 for June 1974.

25. Mrs. Biner filed for a request for a hearing before an administrative law judge on June 3, 1974.

26. Effective September 1969 Mrs. Fannie Buffington began receiving retirement benefits in the amount of $51.40. She became entitled to wife's benefits on her husband's record effective December 1970. At that time her retirement benefit was $60.00 per month and her wife's benefit was $7.00, totaling $67.00 per month. Both in September 1969 and December 1970 when Mrs. Buffington was sent a Certificate of Social Insurance Award she was also sent a copy of the booklet "Rights and Responsibilities". See #6, *supra*.

27. Mr. Ossie T. Buffington, husband of Fannie, had quit working when he filed his application for benefits November 19, 1970. At this time he agreed on his application to report to the Social Security Administration if he returned to work.

28. March 23, 1972, Mrs. Buffington was notified that her wife's benefit was increased due to an increase in her husband's benefit because of his additional earnings in 1970. On the back of the letter was a reminder to notify the Administration of any event which might affect payment of benefits.

29. Mr. Buffington filed an annual earning report for 1972 on September 4, 1973, showing earnings of $3,240.27 and wages over $140.00 per month for January through September. Based on this information Mrs. Buffington's wife's benefit was subject to a deduction of $13.10 per month for January through September, a total of $78.60.

30. Determination of overpayment of $78.60 to Mrs. Buffington was made September 23, 1973.

31. Notice of the overpayment was sent to Mrs. Buffington October 3, 1973, indicating that the overpayment would be withheld from her next benefit. See #14, *supra*,

regarding lack of more previous notice, although this constituted nearly 30 days notice.

32. Mrs. Buffington filed for reconsideration on November 27, 1973. The determination on her request should be made by the middle of July 1974.

33. Mrs. Buffington was entitled to retirement insurance benefit of $80.50 plus a wife's benefit of $15.70 minus a medical insurance premium of $6.30, totaling $89.90 per month September 1973 through January 1974. The overpayment was withheld from her October 1973 check.

34. Mrs. Buffington received $89.90 September 1973, $11.30 October 1973, and $89.90 each month November 1973 through January 1974.

/s/ James E. Forbus
JAMES E. FORBUS
Deputy Director
Bureau of Retirement and
Survivors Insurance

Subscribed and sworn to before
me this 10th day of July 1974.

/s/ Mary A. Brenner
Notary Public

My Commission expires July 1, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. 734-73C2

FANNIE BUFFINGTON and FRANCES BINER, individually and on behalf of all others similarly situated, PLAINTIFFS

vs.

CASPER WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education and Welfare, DEFENDANT

ORDER MODIFYING DEFINITION OF CLASS

This matter having been heard on cross motions for modification of the class action order entered on April 8, 1974, plaintiffs being represented by their attorney Jeff Spence of the Seattle Legal Services Center, defendant being represented by Charles Mansfield, Assistant United States Attorney, and Richard Wetmore, Assistant Regional Attorney, Department of Health, Education and Welfare, the court, having considered the documents on file in this action and the argument of counsel and being fully advised, now finds that:

1. With the exceptions set forth in paragraph 2 below, plaintiffs are appropriate representatives of a class composed of all individuals eligible for Social Security benefits pursuant to 42 U.S.C. § 402 whose benefits have been or will be reduced or otherwise adjusted without prior notice and opportunity for a hearing.

2. The class of which plaintiffs are appropriate representatives does not include:

a. Residents of Hawaii; and

b. Residents of the Eastern District of Pennsylvania; and

c. All other individuals who are plaintiffs or members of a plaintiff class in an action against the instant de-

fendant challenging his practice of reducing or otherwise adjusting Social Security benefits without prior notice and opportunity for a hearing, if a decision on the merits in any such action was entered on or before October 18, 1974.

3. The class is so numerous that joinder of all members is not practicable.

4. There are questions of law and fact common to the class.

5. The claims of the representative parties are typical of the claims of the members of the class.

6. The representatives of the class will fairly and adequately protect the interests of the class.

7. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

IT IS THEREFORE ORDERED that this action shall be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with a class as described in paragraphs 1 and 2 above.

Dated: October 28, 1974.

/s/ Morell E. Sharp
MORELL E. SHARP
United States District Judge

Presented by:

/s/ Jeff Spence
JEFF SPENCE
Attorney for Plaintiffs

Approved as to form by:

/s/ _____
CHARLES MANSFIELD
Assistant United States Attorney
Attorney for Defendant

/s/ _____
RICHARD WETMORE
Assistant Attorney General, HEW
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil Action No. 734-73C2

[Filed Oct. 22, 1974]

FANNIE BUFFINGTON and FRANCES BINER, individually and on behalf of ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

—*vs*—

CASPAR WEINBERGER, Secretary of Health, Education, and Welfare, DEFENDANT

SUMMARY JUDGMENT

This action having come on regularly for hearing before this Court on cross-motions for summary judgment, plaintiffs being represented by Jeff Spence, of Seattle Legal Services, and defendant being represented by Charles Mansfield, Assistant United States Attorney, and Richard Wetmore, Assistant Regional Attorney, Department of Health, Education and Welfare, the Court having considered the documents in the file and the arguments of counsel, and being fully advised, now hereby ORDERS that:

1. This Court has jurisdiction over the subject matter of this lawsuit, pursuant to 28 USC § 1361, and 5 USC § 701 *et seq.*

2. Defendant, his successors, his agents, employees and all persons in active concert or participation with them shall be restrained and enjoined from reducing or adjusting social security benefits accruing to plaintiffs and their class pursuant to 42 USC § 402 without affording them an opportunity for a hearing before any recoupment or adjustment is effected.

3. The hearing shall be conducted by an employee of the Social Security Administration who has had no prior

knowledge of the events leading to the determination of overpayment and decision to recover such overpayment or adjust the beneficiary's payments. The decision maker shall issue a written decision, a copy of which will be sent to the beneficiary, and representative if any. The decision maker shall specify findings of fact and conclusions in support of the decision, and in particular shall state the basis for a finding of overpayment and whether there was fault on the part of the beneficiary. If there is no fault, the decision shall indicate whether recovery of the overpayment will defeat the purpose of Title II of the Social Security Act or be against equity and good conscience, as those terms are defined by the applicable regulations promulgated by the Social Security Administration. A notice advising a beneficiary of his or her right to appeal the decision will be mailed with a copy of the decision.

4. The requirements of such hearing shall include at least the following:

a. The recipient shall have the opportunity to personally appear, be heard, and cross-examine any witnesses;

b. The recipient shall have the opportunity to be represented by an attorney or other representative;

c. The recipient shall have the opportunity to submit documentation for consideration at the hearing;

d. The recipient shall have the opportunity to examine his or her claim file at least five days prior to the date of hearing;

e. No transcript is required to be made of the hearing.

5. Any party aggrieved, in whole or in part, with the decision of the decision maker shall have the right to further administrative appeal.

6. Defendant, his agents and employees and all persons in active concert or participation with them shall be restrained and enjoined from recouping or adjusting social security benefits accruing to plaintiffs and their class pursuant to 42 U.S.C. § 402 without affording them adequate notice of their opportunity for a pre-adjustment

hearing described above and of any other administrative relief to which they may be entitled. If a request for a pre-adjustment hearing is not made within thirty (30) days of the date of mailing of the notice the beneficiary shall be presumed to have waived his or her right to the hearing.

7. Such notice shall include at least the following:

a. A statement of alleged overpayment, an explanation of basis for overpayment, and proposed action for recoupment of the overpayment;

b. A statement of beneficiary's right to hearing;

c. Instructions and forms for requesting a hearing including an explanation that if a hearing is not requested recoupment of the alleged overpayment will begin;

d. A statement of any other administrative relief, such as waiver or partial adjustment;

e. A statement that local office will assist recipient in completing and submitting the forms.

8. All benefits which have been withheld from the named plaintiffs shall be restored pending the opportunity for a hearing as described above.

9. Defendant's motion to stay this order, made in open court on September 13, 1974, is denied.

Dated this 22nd day of October, 1974.

/s/ Morell E. Sharp
MORRELL E. SHARP
United States District
Court Judge

Presented by:

by Charles F. Mansfield
RICHARD H. WETMORE
Attorney for Defendant

/s/ Charles F. Mansfield
CHARLES F. MANSFIELD
Attorney for Defendant

Approved as to form by:

/s/ Jeff Spence
JESS SPENCE
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. 734-73C2

[Filed Nov. 6, 1974]

FANNIE BUFFINGTON AND FRANCES BINER, individually and on behalf of all others similarly situated, PLAINTIFFS

v.

CASPAR WEINBERGER, Secretary of Health, Education, and Welfare, DEFENDANT

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the defendant, Caspar W. Weinberger, Secretary of Health, Education, and Welfare, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment in favor of the plaintiffs and the class they represent entered in this action on the 30th day of October, 1974.

DATED this 6th day of November, 1974.

STAN PITKIN
United States Attorney

/s/ Charles F. Mansfield
CHARLES F. MANSFIELD
Assistant United States Attorney

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

OMB No. 72-R[illegible]

REQUEST FOR RECONSIDERATION

SEATTLE, WASHINGTON
DEC 17 1973
91916
SSA DISTRICT OFFICE

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON	SOCIAL SECURITY CLAIM NUMBER
Frances S Biner	538-18-4795-A

NAME OF CLAIMANT (If different from person named above.)

CLAIM FOR (Specify type, e.g., retirement, disability, hospital insurance, etc.)
Retirement

I do not agree with the determination made on the above claim and request reconsideration.

My reasons are: I do not believe there was any overpayment.

NOTE: If the date of the notice of the determination on this claim was more than six months ago include your reason for not making this request earlier.

I am submitting the following additional evidence (If none, write "None."):
None

Signature (First name, middle initial, last name) (Write in ink)
SIGN HERE Frances S. Biner

Date (Month, day, year)
12-14-73

Telephone Number
EAS-6015

Mailing Address (Number and street, Apt. No., P.O. Box, or Rural Route)
3015 E. Cheary St.

City and State
Seattle, Wash

ZIP Code
98122

Enter Name of County (if any) in which you now live
King

Witnesses are required ONLY if this request has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the person requesting reconsideration must sign below, giving their full addresses

1. Signature of Witness	2. Signature of Witness
Address (Number and street, City, State, ZIP Code)	Address (Number and street, City, State, ZIP Code)

FOR SOCIAL SECURITY OFFICE USE ONLY

PROVIDER NAME AND NUMBER (City and State)	INTERMEDIARY NAME AND NUMBER (City and State)	SOCIAL SECURITY OFFICE ADDRESS

ROUTING INSTRUCTIONS (Check one)

- ☐ State Agency (Route with disability folder)
- ☐ Payment Center _____ BDI, Balto. ☐
- ☐ _____ Intermediary ☐ DRB, Balto.
- ☐ Division of Foreign Claims, Balto.
- ☐ BDPA, Attn: CWAB, Balto.
- ☐ _____ RO (Emergency)

FORM SSA-561 (4-71) NOTE: Take or mail completed copies to your Social Security Office.

Exhibit I

267

JEFF SPENCE
SEATTLE LEGAL SERVICES CENTER
5308 Ballard Avenue N.W.
Seattle, Washington 98107
Phone: (206) 789-2450

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

[Filed Jun. 20, 1974]

No. 734-73C2

FANNIE BUFFINGTON and FRANCES BINER, individually and on behalf of all others similarly situated, PLAINTIFFS

vs.

CASPER WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education and Welfare, DEFENDANT

AFFIDAVIT IN SUPPORT OF PLAINTIFFS MOTION FOR SUMMARY JUDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, Fannie Buffington, being duly sworn, on oath, depose and say that:

I am a plaintiff in the above-entitled action.

I live with my husband, Ossie Buffington, 65, at 1525 26th Avenue East, Seattle, Washington. I am 68 years old.

Our primary sources of income for the current year have been our monthly Social Security benefits. My husband receives $159.30 per month, and except for November, 1973, I receive $89.90. This makes a total of $249.20. Weather permitting, my husband occasionally

does odd jobs such as yard work. The average monthly income from such jobs, when they are available, is approximately $20.00.

During the first or second week of October, 1973, I received a letter from the Social Security office informing me that I had previously received an overpayment in the amount of $78.60, and, consequently, my November check would be reduced accordingly, leaving me a November check of $11.30.

I was not informed of the cause of the alleged overpayment, and to this day I have been unable to find out anything about the overpayment.

Two or three days after I received the letter I went to the local Social Security office and asked for an explanation. I told the woman I spoke with that I did not know why I was being charged with an overpayment, and also that I could not afford to have my November check reduced. She told me that she would "write a letter about it for me."

However, my November check arrived on November 3, 1973, in the amount of $11.30. That was on Friday.

The following Monday I returned to the Social Security office and talked with another woman employee. I told her about my first visit. She went to check for me and returned to tell me that there had been "no response yet" and that she "would let me know" when they heard from the regional office.

I waited ten more days, but there was no response. I then decided that I couldn't afford to wait any longer and I went to a Legal Services office.

On November 19, 1973, my attorney phoned the local Social Security office, but was told by a Mr. Pemberton that the local office had no records or a file for me and thus it would be impossible to check on my case.

My attempts to seek relief through administrative channels have met with delay and frustration, with no end in sight. Therefore, I am appealing to this court for immediate relief.

The reduction in my November check has been a severe blow to us. Our monthly living expenses include mortgage payment, $109.00; car payment, $118.53; car insurance, $37.38; life insurance, $9.50; and credit union repayment, $40.00. We receive food stamps and pay $33.00 for $95.00 worth of food. We have monthly utility bills of approximately $35.00. We owe a doctor $130.00, and the doctor expects $30.00 per month. We owe more than $180.00 for our son's funeral expenses. In addition, we are making small monthly payments to a collection agency, but were forced to miss the November payment.

We could only pay $58.00 on the $118.53 car payments. Consequently, the loan had to be refinanced. Previously the balance was $2,075.54, now it is $2,163.60. We depend upon my Social Security check to make the car payments.

Unless the $78.60 which was withheld from my November check is returned immediately my husband and I will suffer serious and irreparable injury. We desperately need that money to pay the November bills which are now due and owing.

Therefore, we are asking this court for immediate relief.

/s/ Fannie M. Buffington
FANNIE M. BUFFINGTON

Subscribed and sworn to before me
this 26th day of November, 1973.

/s/ Vera N. Jones
VERA N. JONES
Notary Public in and for
the State of Washington,
residing at Seattle.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

[SEAL]

PAYMENT CENTER
Kansas City, Missouri 64106

BUREAU OF RETIREMENT
AND SURVIVORS INSURANCE

Refer to Claim Number
460-14-2600-A

October 3, 1973

Fannie M. Buffington
1525 26 Ave E
Seattle WA 98102

Information about your social security benefits is shown below:

1. Amount of your next check—$11.30.
2. Covers benefits due through—October 1973.
3. Will be sent about—November 3, 1973.
4. Amount of regular check thereafter—$89.90.

Based upon the insured individual's earnings, it has been determined that you have been overpaid in the amount of $78.60. Therefore, an adjustment is being made in your benefits to withhold the additional amount necessary.

If you are enrolled in the medical insurance program, please see item 3 on the back of this notice.

Please notify any social security office promptly of an event which might affect the payment of benefits. There is an explanation on the back of this notice of how work and earnings affect benefit payments.

If you have questions about your claim, you may get in touch with any social security office. Most questions can

be handled by telephone or mail. If you visit an office, however, please take this notice with you.

Sincerely yours,

/s/ R. W. Jacobson
R. W. JACOBSON
Director of Operations

SEE REVERSE SIDE OF THIS NOTICE

If you believe this determination is not correct, you may request that your claim by reexamined. If you want this reconsideration you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request.

1. How Your Work and Earnings Affect Your Benefits

If you earn $2,100 or less in a taxable year (usually January through December) ending after December 1972, nothing will be withheld from your benefits.

If you earn $2,100 in a year, $1 will be withheld from your benefits for each $2 of earnings above $2,100. You will never have more than $1 in benefits withheld for each $2 of earnings above $2,100.

However, regardless of total earnings in a year, benefits are payable for any month in which you neither earn wages of more than $175 nor perform substantial services in self-employment.

Benefits are also payable for all months in which you are 72 or older, regardless of the amount of your earnings in or after the month you reach 72.

2. Report Any Significant Change in Your Work and Earnings to Any Social Security Office

The amount of benefits payable to you for this taxable year has been determined on the basis of your work status at the time you made your annual report of earnings for last year and on the amount of earnings you expected for this year as shown on that report. You should report promptly to any social security office any change which will affect your payments, such as:

a. If you go to work while under age 72 and expect to earn over $2,100 in the year;

b. If you have previously reported that you expect to earn over $2,100 from work, but

(1) You stop work, or

(2) You do not earn over $175 for any month and you do not perform substantial services in self-employment, or

(3) You expect to earn substantially more or less in the year than you previously told us.

Prompt reports enable us to make adjustments to your benefits payments when you have income from work. Delayed reports make it necessary for us to withhold benefits during periods when you may not have income from work.

Any difference between the amount of benefits withheld based on your estimate of earnings and the amount that must be withheld on the basis of your actual earnings will be adjusted after the close of the year when you file your next annual report.

If you have any questions about reporting, you should get in touch with any social security office.

3. Information About Medical Insurance Premiums

a. *If monthly social security benefits are being paid to you now—*

If your premiums are paid up-to-date, 1 month's premium will be withheld from your benefit check each month.

If you owe premiums for last year, the full amount owed will be withheld from your next check.

If you owe premiums only for this year, only 1 month's premium will be withheld from your next check and at the end of the year we will make an adjustment for other premiums owed.

Any excess premiums paid in advance will be refunded to you in a separate check.

b. *If monthly social security benefits are not being paid to you now—*

If this is the first time your benefits are being withheld this year, you will be billed for any premiums you owe.

If your benefits were withheld earlier this year, we will not bill you now. At the end of the year, we will make an adjustment for any premiums due.

4. Information About Overpayments

If you wish to repay the overpayment by installments or have a smaller amount withheld from your social security check over a longer period of time, get in touch with any social security office.

Any overpayment must be withheld from benefits or paid back unless the following statements are true:

a. The overpayment wasn't your fault in any way and you cashed the check(s) because you thought they were correctly paid to you, *and*

b. You couldn't meet your necessary living expenses if you had to pay back the overpayment or have it withheld from your social security checks, or if it would be unfair for some other reason.

If you believe you were without fault and that you should not have to repay the money, you should call, write, or visit any social security office to discuss the matter. The people there may ask you about your assets, monthly income, and expenses to help decide whether repayment would cause you financial hardship.

[Filed Jun. 20, 1974]

JEFF SPENCE
SEATTLE LEGAL SERVICES CENTER
5308 Ballard Avenue, N.W.
Seattle, Washington 98107
Phone: (206) 789-2450

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
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No. 734-73C2

FRANCES BINER, individually and on behalf of all others similarly situated, PLAINTIFFS

vs.

CASPER WEINBERGER, individually and in his capacity as Secretary of the Department of Health, Education and Welfare, DEFENDANT

AFFIDAVIT IN SUPPORT OF PLAINTIFFS MOTION FOR SUMMARY JUDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, FRANCES BINER, being first duly sworn, on oath, depose and say that:

I am a plaintiff in the above-entitled action.

I live at 3015 East Cherry Street, Seattle, Washington.

My sole source of income for the current year has been my monthly social security check. Until October, 1973, my monthly check was for $205.00.

I retired on December 14, 1972. I received a Social Security check for approximately $1,800.00 that month. I received a regular monthly check thereafter until October, 1973.

In the latter part of September, I received notification by mail from the Social Security Administration that I had been overpaid $2,233.60, and, consequently, my benefits would be terminated from September, 1973, through July, 1974. (A copy of that letter is attached.) My October check did not arrive.

In the middle of October I received another letter from the Social Security office. [A copy of that letter is attached.] Enclosed with that letter were forms to be filled out if I felt this termination of my checks would be a hardship.

Both of these letters were forwarded to me in Michigan where I was staying with my sister who was gravely ill with cancer. While in Michigan, I completed the enclosed forms and mailed them back to the Social Security office.

I returned to Seattle on Friday, November 2, 1973, and on the following Monday, November 6, I went to see Mr. Bennett at the local office. Mr. Bennett informed me that there was nothing more he could do to help me and that I would just have to wait for a response from the regional office.

I had not heard anything further as of November 16, 1973, and at that time I came to the Legal Services Office.

The termination of my Social Security checks has left me without any source of income. I have $131.00 in my savings account. I am buying my home and I have to make monthly payments of $103.00. My daughter has loaned me the money to meet these house payments. I receive food stamps. I pay $23.00 for $66.00 worth of food. My daughter is now paying the utility bills for me.

The loss of my monthly benefits has left me practically penniless. Without the help of my daughter, I would be in a desperate situation. Unless my checks are restored, I will suffer severe and irreparable harm.

I have never been informed of the reason for the alleged overpayment. I was never given a hearing to determine if in fact there was an overpayment, or if I was with or without fault. It has been several weeks since I filled out the forms used to determine whether or not the termination would cause me a hardship and

I have received no response. However, my benefits were terminated anyway. I have reason to believe that it will be many, many weeks, if not months, before an administrative determination is made on my request for relief. In the meantime, I am left with no income.

Therefore, I am seeking immediate relief from this court.

DATED THIS 20th day of November, 1973.

/s/ Frances S. Biner
FRANCES S. BINER
Plaintiff

Subscribed and sworn to before me
this 26th day of November, 1973.

/s/ Vera N. Jones
VERA N. JONES
Notary Public in and for
the State of Washington,
residing at Seattle.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
PAYMENT CENTER
SAN FRANCISCO, CALIFORNIA 94101

BUREAU OF RETIREMENT
AND SURVIVORS INSURANCE

REFER TO CLAIM NUMBER:

538-18-4795 A

FRANCES S BINER
3015 E CHERRY ST
SEATTLE WA 98122

DATE: SEP 21, 1973

THIS REFERS TO YOUR ANNUAL REPORT OF EARNINGS FOR 1972 AND YOUR WORK REPORT FOR 1973

WHAT YOU REPORTED

EARNINGS IN 1972	MONTHS IN 1972 IN WHICH YOU DID NOT EARN OVER $140 IN WAGES OR PERFORM SUBSTANTIAL SERVICES IN SELF-EMPLOYMENT												ESTIMATED EARNINGS FOR 1973	WORK STATUS AT TIME YOU MADE REPORT
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC		
$ 7257													$	NOT WORKING

THE STATUS OF YOUR CLAIM AS OF SEP 1, 1973

	TOTAL BENEFITS WHICH SHOULD HAVE BEEN WITHHELD TO DATE	TOTAL BENEFITS ACTUALLY WITHHELD	AMOUNT NEEDED TO ADJUST YOUR CLAIM TO DATE	AMOUNT DUE YOU	REGULAR MONTHLY BENEFIT AMOUNT
1972	$ 2233.60	$ NONE	$ 2233.60	$ NONE	$ 211.50 LESS MED. INS. PREMIUMS
1973	$ NONE	$ NONE	$ NONE	$ NONE	

A REVIEW OF YOUR REPORT SHOWS YOU RECEIVED $2233.60 MORE THAN YOU SHOULD HAVE FOR 1972. TO RECOVER THIS AMOUNT, YOUR REGULAR MONTHLY BENEFITS WILL BE WITHHELD FROM SEP, 1973 THROUGH JUL, 1974. YOU WILL THEN BE DUE A PART OF YOUR BENEFIT FOR JUL, 1974 AND A CHECK FOR $ 92.90 WILL BE SENT TO YOU SHORTLY AFTER AUG 2, 1974. HOWEVER, YOUR BENEFITS CAN BE STARTED IMMEDIATELY IF YOU REFUND THE AMOUNT DUE FOR 1972 BY CHECK OR MONEY ORDER MADE PAYABLE TO THE SOCIAL SECURITY ADMINISTRATION. PLEASE PUT YOUR CLAIM NUMBER ON THE CHECK OR MONEY ORDER.

THE ABOVE PAYMENT OF $ 92.90 MAY BE REDUCED BY ANY UNPAID MEDICAL INSURANCE PREMIUMS DUE, OR INCREASED BY ANY PREMIUMS PAID IN ADVANCE AT THE TIME YOU ARE DUE YOUR NEXT PAYMENT.

THE TOTAL BENEFITS ACTUALLY WITHHELD FOR LAST YEAR REPRESENT ONLY THE BENEFITS WITHHELD BASED ON LAST YEAR'S ESTIMATE OF EARNINGS. IT DOES NOT INCLUDE ANY BENEFITS WITHHELD TO RECOVER AN OVERPAYMENT FOR AN EARLIER YEAR.

If you have questions about your benefits, you may get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit an office, however, please take this notice with you.

Paul W. Quandt

Paul W. Quandt
Director of Operations

SEE REVERSE SIDE OF THIS NOTICE

FORM SSA-L766 (12-72)

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(1) You stop work, or

(2) You do not earn over $175 for any month and you do not perform substantial services in self-employment, or

(3) You expect to earn substantially more or less in the year than you previously told us.

Prompt reports enable us to make adjustments to your benefits payments when you have income from work. Delayed reports make it necessary for us to withhold benefits during periods when you may not have income from work.

Any difference between the amount of benefits withheld based on your estimate of earnings and the amount that must be withheld on the basis of your actual earnings will be adjusted after the close of the year when you file your next annual report.

If you have any questions about reporting, you should get in touch with any social security office.

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